

Exhibit KKK



CASE NO. 1:18-CV-03029

THOMAS SIERRA

V.

REYNALDO GUEVARA, ET AL.

DEPONENT:

NELSON ANDREU

DATE:

May 12, 2023



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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 HON. JOHN Z. LEE
5 HON. M. DAVID WEISMAN
6 CASE NO. 1:18-CV-03029

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8 THOMAS SIERRA,
9 Plaintiff

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11 V.

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13 REYNALDO GUEVARA, ET AL.,
14 Defendants

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23 DEPONENT: NELSON ANDREU
24 DATE: MAY 12, 2023
25 REPORTER: SYDNEY LITTLE

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7	311 North Aberdeen Street		7		
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10	Telephone No.: (312) 243-5900		10	1 - Expert Report of Nelson Andreu	
11	E-mail: anand@loevey.com		11	March 27, 2023	20
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17	321 North Clark Street		17	December 1, 2022 and January 2, 2023	192
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3	ON BEHALF OF THE DEFENDANT, REYNALDO GUEVARA:		3	The VIDEO deposition of NELSON ANDREU was taken at	
4	Megan K. McGrath, Esquire		4	KENTUCKIANA COURT REPORTERS, 110 NORTH WACKER DRIVE,	
5	Leinenweber Baroni & Daffada LLC		5	CHICAGO, ILLINOIS 60606, via videoconference in which	
6	120 North LaSalle Street		6	all participants attended remotely, on FRIDAY the 12th	
7	Suite 2000		7	day of MAY 2023 at 10:05 a.m. (CT); said VIDEO	
8	Chicago, Illinois 60602		8	deposition was taken pursuant to the FEDERAL Rules of	
9	Telephone No.: (866) 786-3705		9	Civil Procedure 30(b)(6). The oath in this matter was	
10	E-mail: mkm@ilesq.com		10	sworn remotely pursuant to FRCP 30(b)(6).	
11	(Appeared via videoconference)		11		
12			12	It is agreed that SYDNEY LITTLE, being a Notary Public	
13	ON BEHALF OF THE DEFENDANTS, ERNEST HALVORSEN, ANTHONY		13	and Digital Reporter for the State of ILLINOIS, may	
14	WOJCIK, JOHN McMURRAY, GEORGE FIGUEROA, EDWARD MINGEY,		14	swear the witness and that the reading and signing of	
15	ROBERT BIEBEL, FRANCIS CAPPITELLI:		15	the completed transcript by the witness is not waived.	
16	Jeffrey R. Kivetz, Esquire		16		
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23	(Appeared via videoconference)		23		
24			24		
25			25		

<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE REPORTER: On record. My name is Sydney</p> <p>4 Little. I'm the online video technician and court</p> <p>5 reporter today, representing Kentuckiana Court</p> <p>6 Reporters, located at 110 North Wacker Drive,</p> <p>7 Chicago, Illinois 60606. Today is the 12th day of</p> <p>8 May 2023. The time is 10:06 a.m. Central. We are</p> <p>9 convened by videoconference to take the deposition</p> <p>10 of Dr. Nelson Andreu, in the matter of Thomas</p> <p>11 Sierra v. Reynaldo Guevara, et al., pending in the</p> <p>12 United States District Court for the Northern</p> <p>13 District of Illinois, Eastern Division, Case number</p> <p>14 118-CV-03029. Will everyone but the witness please</p> <p>15 state your appearance, how you are attending, and</p> <p>16 the location you're attending from, starting with</p> <p>17 Plaintiff's Counsel?</p> <p>18 MR. SWAMINATHAN: Anand Swaminathan for</p> <p>19 Plaintiff Thomas Sierra, appearing by Zoom from</p> <p>20 Chicago.</p> <p>21 MR. KIVETZ: Good morning. This is Jeff</p> <p>22 Kivetz on behalf of the individual defendants,</p> <p>23 except for Defendant Guevara, appearing via Zoom,</p> <p>24 from Chicago, Illinois.</p> <p>25 MS. BARBER: Catherine Barber for Defendant</p>	Page 6	Page 8
<p>1 City of Chicago, also by Zoom in Chicago.</p> <p>2 MS. MCGRATH: Megan McGrath for Defendant</p> <p>3 Guevara, also by Zoom in Chicago.</p> <p>4 MS. FLEMING: Elizabeth Fleming on behalf of</p> <p>5 the individual defendants, except Defendant</p> <p>6 Guevara, appearing by Zoom in Chicago.</p> <p>7 THE REPORTER: Thank you. Dr. Andreu, will</p> <p>8 you please state your name for the record?</p> <p>9 THE WITNESS: Nelson Andreu.</p> <p>10 THE REPORTER: Thank you. And do all parties</p> <p>11 stipulate that the witness is, in fact, Nelson</p> <p>12 Andreu?</p> <p>13 MR. SWAMINATHAN: So stipulated by Plaintiff.</p> <p>14 MR. KIVETZ: Stipulated by the Defendants.</p> <p>15 MS. MCGRATH: So stipulated.</p> <p>16 THE REPORTER: Thank you.</p> <p>17 MS. BARBER: Agreed.</p> <p>18 THE REPORTER: Thank you. And sir, will you</p> <p>19 please raise your right hand? Do you solemnly</p> <p>20 swear or affirm that the testimony you're about to</p> <p>21 give will be the truth, the whole truth, and</p> <p>22 nothing but the truth?</p> <p>23 THE WITNESS: I do.</p> <p>24 THE REPORTER: Thank you. Counsel may begin.</p> <p>25 DIRECT EXAMINATION</p>	Page 7	Page 9

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1 deposition, so let me just go through some questions
 2 that I think are -- came up in your Reyes deposition,
 3 and I think we can sort of short circuit them here. So
 4 did you have a chance to review the deposition
 5 transcript of your testimony in the Reyes case?

6 A. No, sir. I have not.

7 Q. Did you -- did -- you recall testifying as an
 8 expert in the Reyes case in a deposition, correct?

9 A. I do.

10 Q. Okay. Is there anything that you said during
 11 the course of that deposition that you felt was
 12 misleading or inaccurate in any way?

13 A. I don't believe so, but I -- I haven't had an
 14 opportunity to review it, and I would like to.

15 Q. You said you would like to?

16 A. Well, if -- if at all possible, yes.

17 Q. Okay. Have you -- are you aware that there is
 18 a transcript of your deposition in the Reyes case?

19 A. I assume there is, yes.

20 Q. Have you requested a copy of it up to today?

21 A. No, sir.

22 Q. Okay. At any point --

23 MR. KIVETZ: Anand, do you have a copy of the
 24 transcript? We were understanding that nobody
 25 ordered it.

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1 MR. SWAMINATHAN: I haven't ordered it.

2 MR. KIVETZ: Yeah. And I don't have it
 3 either, so...

4 BY MR. SWAMINATHAN:

5 Q. Yeah, but you're welcome to get a copy.

6 Mr. Andreu, you understand you're able to get a copy of
 7 the transcript if you'd like one, correct?

8 MR. KIVETZ: Through his counsel, but yes. Go
 9 ahead.

10 THE WITNESS: Yes. Through the counsel.

11 Correct.

12 BY MR. SWAMINATHAN:

13 Q. Okay. And you have not requested it, correct?
 14 A. That is correct.
 15 Q. Okay. At any point between the time of your
 16 testimony -- strike that. At any point between the time
 17 of your deposition testimony in the Reyes-Solache case
 18 and today, have you ever thought to yourself, boy, I
 19 said something during the course of that deposition that
 20 was not accurate or truthful?

21 MR. KIVETZ: Objection. Form, foundation.

22 THE WITNESS: I don't believe so, but again,
 23 without reviewing it, I -- I really can't answer
 24 for certain.

25 BY MR. SWAMINATHAN:

Page 12

1 Q. So you think it's possible that you gave some
 2 untruthful or inaccurate testimony during that
 3 deposition?

4 MR. KIVETZ: Objection. Form, misstates his
 5 testimony.

6 THE WITNESS: I -- I wouldn't say untrue, but
 7 I -- in any event, I would like to -- to review it.

8 BY MR. SWAMINATHAN:

9 Q. Okay. And you haven't taken that opportunity
 10 between then and today; is that fair?

11 MR. KIVETZ: Objection. Form. Because he --
 12 no -- there is no transcript available, but go
 13 ahead.

14 THE WITNESS: That's correct.

15 BY MR. SWAMINATHAN:

16 Q. Sitting here today, is there anything that you
 17 said during that deposition that you believe to be false
 18 or inaccurate?

19 MR. KIVETZ: Objection. Form.

20 THE WITNESS: As I stated before, I don't
 21 believe so, but again, it would be better to review
 22 the testimony.

23 BY MR. SWAMINATHAN:

24 Q. Okay. And fair to say, in the Reyes case,
 25 when you offered opinions in that case, your opinions

Page 13

1 were based on the -- I mean, we testified about this in
 2 that case, but let me just ask you. In the Reyes case,
 3 that was the case involving Detective Guevara and other
 4 Area 5 Chicago Police detectives, correct?

5 A. Yes, sir.

6 Q. And in that case, you opined that there were
 7 no deviations from accepted police practices by any of
 8 the Chicago Police officers; is that fair?

9 A. None that I would -- that I could see in the
 10 documents I reviewed, correct.

11 Q. Okay. And that's also your opinion in this
 12 case, correct? That there were no deviations from
 13 police practices by Detective Guevara, or any of the
 14 other police officers involved in the Andujar
 15 investigation?

16 A. Correct.

17 Q. Okay. In the Reyes case, fair to say your
 18 opinion was based on acceptance of the information
 19 contained in the police reports, correct?

20 A. In all of the -- in all of the documents that
 21 I reviewed, yes. Including the --

22 Q. In the Reyes case, you didn't offer any
 23 opinions that were based on accepting some of the
 24 testimony that was contained in the deposition
 25 transcripts, isn't that fair?

<p style="text-align: right;">Page 14</p> <p>1 THE WITNESS: Say that again?</p> <p>2 MR. KIVETZ: Objection to form.</p> <p>3 THE WITNESS: I didn't understand.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. In the Reyes case, your opinions did not 6 accept the testimony of Mr. Reyes and Mr. Solache, for 7 example, correct?</p> <p>8 MR. KIVETZ: Objection. Form.</p> <p>9 THE WITNESS: I -- I still don't understand 10 your question, sir.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. You understand, in the Reyes case, Mr. Reyes 13 and Mr. Solache specifically testified that they were 14 physically abused during the course of their 15 interrogation; do you recall that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. And is it your opinion that that is 18 consistent with the generally accepted police practices, 19 to physically abuse suspects?</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 THE WITNESS: No, it's not.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. Okay. So in that case, you did not accept 24 that testimony as being true, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 alleging police abuse.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. In this case, in the Thomas Sierra case, you 4 accepted the information contained in the police reports 5 as true, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And for purposes of your opinions in 8 this case, you're relying on the police reports as being 9 accurate; is that fair?</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: The police reports and other 12 documents that I was presented and reviewed, yes.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. But you didn't credit all of the documents 15 that you reviewed; is that fair?</p> <p>16 MS. BARBER: Objection. Form.</p> <p>17 MR. KIVETZ: Objection. Form, foundation.</p> <p>18 THE WITNESS: Yes, that is correct.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Okay. For example, you reviewed -- you 21 received a transcript of the testimony of Hector 22 Montanez, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And if Hector Montanez's testimony was true, 25 do you believe that the police officers followed</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Go ahead.</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Because if, in fact, you did credit 6 their testimony, you would agree that would be a 7 deviation from accepted police practices, correct?</p> <p>8 A. Police abuse, yes.</p> <p>9 Q. Okay. And in that case, you -- instead of 10 crediting the testimony of Mr. Reyes and Mr. Solache, 11 you credited the testimony -- strike that. In that -- 12 in the Reyes-Solache case, instead of crediting the 13 testimony of Mr. Reyes and Mr. Solache, you credited the 14 police report's descriptions of what happened during the 15 course of those interrogations; is that fair?</p> <p>16 MS. BARBER: Objection. Form and foundation.</p> <p>17 THE WITNESS: Not just -- not just the police 18 reports, but the totality of the documents that I 19 reviewed.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. But not the testimony of Mr. Reyes and 22 Mr. Solache?</p> <p>23 A. Not the parts --</p> <p>24 MR. KIVETZ: Objection. Form, foundation.</p> <p>25 THE WITNESS: Not the parts of their statement</p>	<p style="text-align: right;">Page 17</p> <p>1 generally accepted police practices?</p> <p>2 MR. KIVETZ: Objection. Form, foundation.</p> <p>3 THE WITNESS: So he recanted what he had 4 originally said, but -- so I -- I believe the 5 original statement that he gave to the ASA.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Okay. So you credited his original statement 8 to the ASA, but not his deposition testimony; is that 9 fair?</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. Okay. And so for purposes of your opinions, 14 you accepted the police reports and handwritten 15 statements that were contained in the police file, but 16 not his deposition testimony; is that fair?</p> <p>17 A. Other -- other documents, including the police 18 reports and his original statement, that is correct.</p> <p>19 Q. Okay. And -- but for purposes of your 20 opinions, you did not credit his deposition testimony; 21 is that fair?</p> <p>22 A. His recanting, yes, that is fair.</p> <p>23 Q. Okay. And did you credit, at all, the 24 testimony of Jose Melendez?</p> <p>25 MR. KIVETZ: Objection. Form, foundation.</p>

Page 18

1 THE WITNESS: I credit his original statement
 2 that he gave to the state attorney. Yes.
 3 BY MR. SWAMINATHAN:
 4 Q. Yeah. You're talking about as documented in
 5 the police reports?

6 A. Yes.
 7 Q. Okay. Did you credit his --

8 A. And --
 9 Q. -- did you credit his --

10 A. And -- and --

11 Q. -- I'm sorry, go ahead. Go ahead. Go ahead.

12 A. And in his -- his written statement.

13 Q. Did you credit his criminal trial testimony in
 14 offering your opinions in this case?

15 MR. KIVETZ: Objection. Form.

16 THE WITNESS: Who -- which one? Which person
 17 was that?

18 BY MR. SWAMINATHAN:

19 Q. Jose Melendez, the eyewitness who was in the
 20 vehicle with the victim.

21 A. His recanting in the trial testimony, no.

22 Q. You did not credit that in -- for purposes of
 23 your opinions, correct?

24 A. That is correct.

25 Q. And did you credit any of the testimony he's

Page 19

1 given in any depositions since the criminal trial?

2 MR. KIVETZ: Objection. Form, foundation.

3 THE WITNESS: Not in which he recanted his
 4 original statement, no.

5 BY MR. SWAMINATHAN:

6 Q. Why not?

7 A. Because I am leery, and -- and in my
 8 experience -- that recantations can be made for a
 9 variety of reasons. And usually I have found that the
 10 original statement that's given close in time to the
 11 actual incident is the truthful one.

12 Q. Okay. And so ultimately your opinions in this
 13 case are based on your credibility determinations; is
 14 that fair?

15 MR. KIVETZ: Objection. Form, misstates his
 16 testimony.

17 THE WITNESS: No, credibility is -- is up to
 18 the trier of facts. I'm just relaying what my
 19 experience has shown.

20 BY MR. SWAMINATHAN:

21 Q. But ultimately, your opinions are based on
 22 your assessment of credibility; is that fair?

23 MR. KIVETZ: Objection. Form, foundation,
 24 misstates his testimony.

25 THE WITNESS: No, sir. Not necessarily.

Page 20

1 Again, I -- I -- it -- my experience shows that --
 2 that there's -- when people recant, they -- they
 3 usually aren't being as truthful as they were when
 4 they gave their original statement.

5 BY MR. SWAMINATHAN:

6 Q. Are you an expert on truthfulness?

7 MR. KIVETZ: Objection. Form.

8 THE WITNESS: No, not untruthfulness. I mean
 9 that, I guess, would require some type of a -- of a
 10 psychological training or degree, but my experience
 11 in -- in -- in dozens, if not hundreds, of cases
 12 has shown me to believe that the original
 13 statements are -- are the most accurate and most
 14 truthful.

15 BY MR. SWAMINATHAN:

16 Q. Okay. And you're relying on that experience
 17 and your conclusions based on that experience in
 18 offering your opinions in this case; is that fair?

19 MR. KIVETZ: Objection. Form, foundation.

20 THE WITNESS: Yes, sir.

21 BY MR. SWAMINATHAN:

22 Q. Okay. Can you tell me, do you have a copy of
 23 your report in front of you, sir?

24 A. I do.

25 MR. SWAMINATHAN: Let's mark it as Exhibit 1.

Page 21

1 (EXHIBIT 1 MARKED FOR IDENTIFICATION)

2 BY MR. SWAMINATHAN:

3 Q. Can you show me where in your report you
 4 credit the testimony of Hector Montanez?

5 MR. KIVETZ: Objection. Form.

6 THE WITNESS: On Page 8, Point 29, when the
 7 detectives interviewed Montanez, he provided
 8 information that he was in the car when Sierra
 9 produced a gun, and fired shots at the victim, and
 10 -- and/or the victim's car.

11 BY MR. SWAMINATHAN:

12 Q. And where is -- where are you getting that
 13 information from? In -- so you identified Paragraph 29;
 14 is that right?

15 A. Yes, sir.

16 Q. Okay. And in Paragraph 29, where did you get
 17 that information from Paragraph 29 from?

18 A. From the information that I reviewed,
 19 primarily the police supplementary reports.

20 Q. Not primarily, entirely the police
 21 supplementary report, correct?

22 MR. KIVETZ: Objection. Form.

23 THE WITNESS: I can't say entirely, because I
 24 reviewed countless documents, but I would say
 25 primarily from the police reports.

Page 22

1 BY MR. SWAMINATHAN:

2 Q. Other than the police reports, is there any
 3 other documents that you're aware of that support the
 4 information contained in Paragraph 29?

5 A. The statement of Mr. Montanez given to the
 6 State Attorney.

7 Q. Thank you. Anything else?

8 A. Not that I can recall offhand, but again, it
 9 was a totality of everything that I reviewed in this
 10 case.

11 Q. Okay. And now, can you tell me where in your
 12 report you credit the deposition testimony of Hector
 13 Montanez?

14 MR. KIVETZ: Objection. Form. You keep
 15 saying credit. This is an expert. He's not --
 16 he's looking at the total synopsis of everything.

17 MR. SWAMINATHAN: You've made your objection,
 18 we've got it.

19 MR. KIVETZ: He's not making any credibility
 20 determination.

21 MR. SWAMINATHAN: We've noted your objection.
 22 You've made your objection.

23 MR. KIVETZ: You know that full well. So I
 24 mean, I don't know why you're trying to confuse the
 25 issue by asking bad, awkward questions that are

Page 23

1 getting --

2 MR. SWAMINATHAN: Objection to form. Objection
 3 to form. Let's just do objections to form.

4 BY MR. SWAMINATHAN:

5 Q. Go ahead, Mr. Andreu.

6 MR. KIVETZ: Objection to form. I just -- I'm
 7 going to follow the Federal Rules, but I wish that
 8 you would just ask a reasonable question, and not
 9 try to turn it and manipulate it in a way that's
 10 just making it confusing and ridiculous when you
 11 know full well no one here is making any --

12 MR. SWAMINATHAN: No speaking objections.

13 MR. KIVETZ: -- credibility --

14 MR. SWAMINATHAN: Do Federal Rules allow
 15 speaking objections?

16 MR. KIVETZ: -- nobody is making any type of
 17 credibility --

18 MR. SWAMINATHAN: Where are the speaking
 19 objections allowed in the Federal Rules? Please
 20 stop.

21 BY MR. SWAMINATHAN:

22 Q. Go ahead, Mr. Andreu.

23 A. I'm going through my report.

24 Q. Thank you.

25 A. Could you ask -- repeat that question please?

Page 24

1 Q. Yes. Can you show me where in your report you
 2 credit the deposition testimony of Hector Montanez?

3 MR. KIVETZ: Objection. Form, misstates his
 4 previous testimony.

5 MR. SWAMINATHAN: Thank you.

6 MR. KIVETZ: Foundation.

7 THE WITNESS: No, sir. I don't see anywhere
 8 where I discredited Montanez.

9 BY MR. SWAMINATHAN:

10 Q. Is there anywhere where you credit
 11 Mr. Montanez's testimony?

12 MR. KIVETZ: Objection. Form, foundation,
 13 misstates his previous testimony.

14 THE WITNESS: On Page 11, Point 51, it says,
 15 "Montez [sic] identified Sierra as the shooter."

16 BY MR. SWAMINATHAN:

17 Q. Is that from his deposition testimony, or from
 18 the reports?

19 MR. KIVETZ: Objection. Form, foundation.

20 THE WITNESS: From the police reports, and --
 21 and -- and all the other information, not from his
 22 deposition.

23 BY MR. SWAMINATHAN:

24 Q. Okay. And is there any -- would you agree
 25 with me there's nowhere in your deposition -- strike

Page 25

1 that. Would you agree with me that there's nowhere in
 2 your report where you credit the deposition testimony of
 3 Hector Montanez?

4 MR. KIVETZ: Objection. Form, foundation,
 5 misstates his report. I mean, it's in the
 6 materials reviewed.

7 BY MR. SWAMINATHAN:

8 Q. Go ahead.

9 A. I -- I did not find that in my report.

10 Q. Okay. And there's nowhere in your report
 11 where you accept the deposition testimony of Hector
 12 Montanez, and consider it in your opinions; is that
 13 fair?

14 MR. KIVETZ: Objection. Form, foundation,
 15 misstates his report.

16 THE WITNESS: I considered the totality of
 17 what I reviewed in -- in my opinions, to include
 18 deposition testimony of all the depositions that I
 19 -- that I was presented with in the documents in
 20 which I reviewed.

21 BY MR. SWAMINATHAN:

22 Q. Hector Montanez testified at his deposition
 23 that he was threatened and subjected to promises; is
 24 that fair?

25 MR. KIVETZ: Objection. Form.

Page 26

1 THE WITNESS: Yes, sir. I read that.
 2 BY MR. SWAMINATHAN:
 3 Q. Okay. And would you agree that the
 4 interrogation techniques that were used on Mr. Montanez,
 5 as he described them, would deviate from generally
 6 accepted police practices?

7 MR. KIVETZ: Objection. Form.
 8 THE WITNESS: As he described them, yes.
 9 BY MR. SWAMINATHAN:
 10 Q. Okay. And so in your report, you don't
 11 acknowledge that -- if the police officers deviated from
 12 generally accepted police practices, based on
 13 Mr. Montanez's testimony about what occurred; is that
 14 fair?

15 MR. KIVETZ: Objection. Form, foundation,
 16 misstates his report. Go ahead.

17 THE WITNESS: That is correct.
 18 BY MR. SWAMINATHAN:

19 Q. And that's because you did not credit his
 20 deposition testimony about what occurred during the
 21 course of his interrogations, correct?

22 MR. KIVETZ: Objection. Form, foundation,
 23 misstates the report.

24 A. No, sir. Not -- not necessarily. Again, I --
 25 I believe that what individuals -- what the -- what all

Page 27

1 the individuals said in their written statements to the
 2 State Attorney, close at hand to when the incident
 3 occurred, are more credible, and there are reasons for,
 4 later on, individuals recanting or changing their
 5 testimony, based on --

6 Q. Okay.

7 A. -- experience.

8 Q. Okay. And so part of your opinion ultimately
 9 is that the statements given to police officers were
 10 more credible than later statements given at deposition;
 11 is that fair?

12 MR. KIVETZ: Objection. Form.

13 THE WITNESS: My experience leads me to
 14 believe they'll get that, yes.

15 BY MR. SWAMINATHAN:

16 Q. Okay. And that experience that you've just
 17 described, ultimately, is something you relied on for
 18 purposes of offering your opinions in this case; is that
 19 fair?

20 MR. KIVETZ: Objection. Form.

21 THE WITNESS: My experience, training, and
 22 education. Yes, sir.

23 BY MR. SWAMINATHAN:

24 Q. Okay. And would it be fair to say that, in
 25 your report, you do not credit the testimony of Jose

Page 28

1 Melendez about what occurred during the course of his --
 2 the identification procedures that he was involved in;
 3 is that fair?

4 MR. KIVETZ: Objection. Form. I mean, this --
 5 -- it -- these questions are ridiculous. Nobody is
 6 crediting anything or not, it's all up to the jury,
 7 you know full --

8 MR. SWAMINATHAN: Stop making speaking
 9 objections.

10 MR. KIVETZ: -- well about that. I mean,
 11 you're trying to confuse the witness. It --
 12 it's --

13 MR. SWAMINATHAN: I'm not trying to confuse
 14 the witness.

15 MR. KIVETZ: It's --

16 MR. SWAMINATHAN: Mr. Andreu is a --

17 MR. KIVETZ: Police officer.

18 BY MR. SWAMINATHAN:

19 Q. How long have you been in -- how long have you
 20 been -- were you a police officer, Mr. Andreu?

21 A. 40 years.

22 Q. Am I confusing you?

23 A. Some of your questions are strange, yes.

24 Q. Yeah. Tell me what's confusing for you.

25 A. Well, because I've said several times that my

Page 29

1 experience is that the initial statements are more
 2 reliable and more truthful. And you keep asking me
 3 individuals the same question [sic].

4 Q. So are there words that I've used during this
 5 deposition that you don't understand?

6 A. No, sir.

7 Q. Okay. Thank you. Mr. Andreu, let me ask the
 8 question again, and Mr. Kivetz can make an objection, a
 9 non-speaking objection, an objection to form, if he'd
 10 like. Would you agree with me that, in your report,
 11 there is nowhere where you credit the deposition
 12 testimony or criminal trial testimony of Jose Melendez?

13 MR. KIVETZ: Objection. Form, misstates his
 14 report.

15 THE WITNESS: Specifically in the report, no.
 16 BY MR. SWAMINATHAN:

17 Q. Okay. Because ultimately you agree that, if
 18 you credit the criminal trial testimony and deposition
 19 testimony of Jose Melendez, that would be a deviation
 20 from generally accepted police practices, correct?

21 MR. KIVETZ: Objection. Form.

22 THE WITNESS: The allegations of police
 23 misconduct and abuse that were made later on, I
 24 believe, if those occurred, were -- were not proper
 25 police procedures. I agree. But again, you have

Page 30

1 to go back to my opinions that the first statement
 2 given to the ASA were [sic] the most accurate and
 3 most truthful.

4 BY MR. SWAMINATHAN:

5 Q. Mr. Melendez says that things occurred before
 6 he gave the statement to the ASA; is that fair?

7 MR. KIVETZ: Objection. Form, foundation.

8 THE WITNESS: That -- say that again.

9 BY MR. SWAMINATHAN:

10 Q. Mr. Melendez testified that the police
 11 officers did things during the course of the
 12 identification procedures and their interviews of him
 13 before he ever met with the ASA, correct?

14 MR. KIVETZ: Objection. Form, foundation.

15 Which testimony are you referring to?

16 BY MR. SWAMINATHAN:

17 Q. Go ahead.

18 A. I -- I -- I don't understand that question,
 19 sir.

20 Q. Yeah. You reviewed the deposition testimony
 21 and criminal trial testimony of Mr. Melendez, correct?

22 A. Yes, sir.

23 Q. Okay. And in the -- in both of those
 24 testimonies, Mr. Melendez indicated that, during the
 25 course of his interviews with police officers, before he

Page 31

1 met with the ASA, he informed them that he didn't get a
 2 view of the shooter's face, correct?

3 MR. KIVETZ: Objection. Form, foundation.

4 THE WITNESS: Specifically having seen that, I
 5 -- I don't recall. If you could bring up that
 6 testimony or something, and allow me to review it,
 7 I would be able to answer your question, but...

8 BY MR. SWAMINATHAN:

9 Q. In offering your opinion -- oh, sorry. Go
 10 ahead. Go ahead. In offering your opinions in this
 11 case, did you consider any testimony that indicated that
 12 Mr. Melendez was not able to make an identification of
 13 the shooters?

14 MR. KIVETZ: Objection. Form.

15 THE WITNESS: No, sir.

16 BY MR. SWAMINATHAN:

17 Q. Okay.

18 A. The statement that he gave through --
 19 indicated to me otherwise.

20 Q. What indicated otherwise?

21 A. That he was able to make an identification.

22 Q. What indicated other -- what indicated that he
 23 was able to make an identification?

24 A. It's -- he -- he made the identification in
 25 his statement to the State Attorney.

Page 32

1 Q. So in the police reports, in the statements to
 2 the State's Attorney?

3 A. Yes, sir.

4 Q. What about in his deposition testimony, or
 5 criminal trial testimony?

6 A. Again, I would have to actually see what point
 7 you're talking about in those testimonies. I reviewed
 8 thousands of pages of documents, and I really can't
 9 remember every one.

10 Q. In the deposition testimony and criminal trial
 11 testimony of Mr. Melendez, he says that he was
 12 specifically told which photo to select, fair?

13 MR. KIVETZ: Objection. Form, foundation.
 14 Misstates his testimony.

15 THE WITNESS: Again, I would like to be able
 16 to review that part of his testimony before --

17 BY MR. SWAMINATHAN:

18 Q. You don't remember that piece of testimony
 19 from Mr. Melendez? It's kind of a big deal in this
 20 case, yeah?

21 MR. KIVETZ: Objection. Form. He can --
 22 stop. He just asked you if -- for a specific cite
 23 to show whatever support you think you're coming up
 24 with here. He asked you specifically, you're
 25 refusing to do it. And now you're basically

Page 33

1 harassing him by claiming, "You don't remember?" I
 2 mean, come on. It -- this happens all the time in
 3 these deps --

4 MR. SWAMINATHAN: Your objection --

5 MR. KIVETZ: It happens to me almost every dep
 6 that I take with you. Somebody says they don't
 7 remember. They ask you to point out the specific
 8 piece of evidence, which they're entitled to do.
 9 You're refusing to do it.

10 MR. SWAMINATHAN: I am refusing to do it.
 11 BY MR. SWAMINATHAN:

12 Q. Mr. Andreu, let the record reflect I'm
 13 refusing to do it. So let's be really clear. Is it
 14 your -- is it the case that, in this case -- did you
 15 spend time preparing for this deposition at all?

16 A. Yes, sir.

17 Q. How much time did you spend preparing for this
 18 deposition?

19 A. Maybe ten hours.

20 Q. Okay. And did you review your report and the
 21 various materials that you'd reviewed in writing your
 22 report?

23 A. Not all of the material. That wouldn't be
 24 possible in ten hours.

25 Q. Okay. But you reviewed a lot of it, fair?

Page 34

1 A. Some -- most of it -- or some of it, I should
 2 say, not even most of it.

3 Q. And what did you review? Did you review all
 4 the police reports?

5 A. I reviewed the police reports.

6 Q. Okay. Did you review all the depositions?

7 A. No, not all of the depositions.

8 Q. Did you review any of the depositions in
 9 preparation for this deposition?

10 A. Yes, sir.

11 Q. Which depositions did you review?

12 A. I can't remember at this point, but I reviewed
 13 depositions. I reviewed Mr. Tiderington's report.

14 Q. Can you tell me any depositions that you
 15 recall reviewing in preparation for today's deposition?

16 A. No, sir.

17 MS. BARBER: I'm sorry. Can -- I didn't hear
 18 that question? Can you say that again?

19 BY MR. SWAMINATHAN:

20 Q. Can you tell me any depositions that you
 21 recall reviewing in preparation for this deposition?

22 A. Not by specific names right now, sir. No, I
 23 can't specifically tell you, but I did review
 24 depositions.

25 Q. Okay. And as you sit here today, is it your

Page 35

1 testimony that you have no idea whether Jose Melendez
 2 testified that he was told by the police officers which
 3 photo to select?

4 MR. KIVETZ: No. Objection. Form. Misstates
 5 his testimony. He asked you to provide the
 6 specific sentence that you're asking about in
 7 regards to the -- either the deposition or the
 8 criminal trial testimony, you're refusing to
 9 provide it.

10 BY MR. SWAMINATHAN:

11 Q. Go ahead.

12 A. No, sir. No, sir. I'm not saying that. What
 13 I'm saying is that I may have reviewed it. I may have
 14 seen it, but I would like to be able to read that
 15 portion where he says that, either deposition or trial
 16 testimony, if that would be possible.

17 Q. No. I'm just asking you a simple question.
 18 Sitting here today, do you have any idea what Jose
 19 Melendez said occurred during the course of the photo
 20 array identification procedure, in his testimony?

21 A. Say that question again, please?

22 Q. Yeah. Sitting here today, do you have any
 23 idea what Jose Melendez testified had occurred during
 24 the course of the photo array identification procedure?

25 MR. KIVETZ: Objection. Form. And which

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1 testimony on it? His criminal trial or his
 2 deposition?

3 BY MR. SWAMINATHAN:

4 Q. Any of it. Go ahead.

5 A. I do -- I do remember his trial testimony and
 6 his deposition. I'm not -- I just don't remember
 7 specifically the question you're asking me. That's why
 8 I would like to -- to view that portion.

9 Q. Focus on my question. Do you remember -- you
 10 said you do remember that -- his criminal trial
 11 testimony and his deposition. What do you remember
 12 about it?

13 A. Sir, the -- the trial testimony and the
 14 depositions were hours long. I -- I can't tell you
 15 specifically what I remember and I don't remember.

16 Q. So what do you remember generally about it?

17 A. What -- that he recanted his -- his initial
 18 statement. That's the gist of what -- what I can
 19 remember.

20 Q. Yeah. And what does he -- do you remember
 21 anything about what he says about how he came to
 22 identify Thomas Sierra?

23 MR. KIVETZ: Objection to form.

24 THE WITNESS: Sir, I -- I -- in order to give
 25 an accurate answer to that question, I would like

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1 to view that portion of his testimonies.

2 BY MR. SWAMINATHAN:

3 Q. Do you have any understanding, sitting here
 4 today at this deposition in the Thomas Sierra case,
 5 whether or not Jose Melendez testified that he was told
 6 which photo to select? Any idea?

7 A. That may --

8 MR. KIVETZ: Objection. Form, foundation.

9 THE WITNESS: That may be in the -- in -- in
 10 the documents that I reviewed. I'm not saying
 11 definitively that it's not there, but again, I
 12 would like to review those documents before -- and
 13 so that I will be guessing at your answer.

14 BY MR. SWAMINATHAN:

15 Q. If Mr. Melendez testified that he was told
 16 which photo to select from the photo array, would you
 17 agree with me that would be a deviation from generally
 18 accepted police practices?

19 A. Yes, sir.

20 Q. Okay. And if Jose Melendez was given any
 21 indication about which photo to select from the photo
 22 array, do you agree that would deviate from generally
 23 accepted police practices?

24 MR. KIVETZ: Objection. Form. Hold on.
 25 Objection. Form, foundation, speculative,

<p>1 incomplete hypothetical.</p> <p>2 THE WITNESS: Yes, sir.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. And you don't include, anywhere in your report, the opinion that, if Jose Melendez was given any indication of which photo to select from the photo array, that that would deviate from generally accepted police practices, correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Why not?</p> <p>7 A. Because I don't believe that those took -- took place. I think that the -- the changes in testimony that happened subsequent to their initial statements to the State Attorney occurred for reasons that I don't know, but I -- I -- I stand by my statements that their initial statements are, in my opinion, the most reliable.</p> <p>8 Q. Okay. Because ultimately you -- for purposes of your opinions, you accepted what's contained in the police reports and handwritten statements about what Mr. Melendez experienced rather than his testimony; is that fair?</p> <p>9 MR. KIVETZ: Objection to form.</p> <p>10 THE WITNESS: I considered everything, but yes, primarily the -- the original statements and</p>	Page 38	<p>1 A. Yes.</p> <p>2 Q. Okay. And in your opinions, from Page 9 to the end of the report, Page 19, can you please identify for me anywhere in your report where you credited testimony from any witnesses?</p> <p>3 MR. KIVETZ: Objection. Form.</p> <p>4 MS. BARBER: Objection. Form.</p> <p>5 THE WITNESS: Page 10, I explain what Melendez told the police officers.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Is that from testimony, or is that from police reports?</p> <p>8 A. That's from police reports, I believe --</p> <p>9 Q. Okay.</p> <p>10 A. -- at -- at that point in -- in my report.</p> <p>11 Q. Okay. So tell me where -- let me ask the question again. Just focus on what I'm asking you about. I'm not asking you about police reports. I'm asking you about testimony, okay?</p> <p>12 A. Okay.</p> <p>13 Q. So let me -- let me ask you --</p> <p>14 MR. KIVETZ: Deposition testimony --</p> <p>15 deposition testimony, recant testimony, criminal trial testimony? What testimony are you asking him?</p>	Page 40
<p>1 the police reports.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay. And did you review the deposition of Lucy Montalvo?</p> <p>4 A. Yes.</p> <p>5 Q. And where in your report do you credit the deposition testimony of Lucy Montalvo, if at all?</p> <p>6 A. I don't believe that -- that I mentioned her deposition in my report.</p> <p>7 Q. Why not?</p> <p>8 A. Because again, I relied on her initial statement and the police reports.</p> <p>9 Q. Okay. Take a look at Page 5 of your report?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Beginning on Page 5 of your report, you begin to discuss the Andujar homicide investigation and the related -- and the Gonzalez murder investigation, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. And let's go to Page 9; is that where your opinions begin?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And so from Page 9 to Page 19 of your expert report, that is the section that contains your opinions in this case, correct?</p>	Page 39	<p>1 MR. SWAMINATHAN: I'm asking you about testimony of any kind.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. You understand, sir, when I say the word "testimony," testimony is anything that's a sworn statement under oath, like a criminal trial testimony or deposition transcript, fair, Mr. Andreu?</p> <p>4 A. Okay. If that's what you're referring to.</p> <p>5 Q. Yeah. Okay. You understand what the word testimony means, correct?</p> <p>6 A. Yeah, but testimony can be verbal, as well. If a person says something that to the detectives, they're testifying to what they saw --</p> <p>7 Q. Okay.</p> <p>8 A. -- it may not -- that may not be under oath, but that is verbal testimony.</p> <p>9 Q. Okay. Thank you. Let's make that -- that's a valuable clarification. Thank you. When I refer to testimony, I'm talking about any statements given by witnesses under oath, either in a criminal -- in a criminal trial proceeding, deposition testimony, do you understand that?</p> <p>10 A. Okay.</p> <p>11 Q. Okay. As compared to statements given to police officers, unsworn. Do you understand that?</p>	Page 41

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1 A. Yes, sir.

2 Q. For example, you understand, when you give
 3 testimony under oath at a criminal trial, which you've
 4 done many, many times, that's different than simply
 5 something you might say in conversation with somebody;
 6 is that fair?

7 A. Correct.

8 Q. You understand the importance of giving -- of
 9 a statement being sworn?

10 A. Yes.

11 MR. KIVETZ: Objection. Form.

12 THE WITNESS: Yes.

13 BY MR. SWAMINATHAN:

14 Q. You understand the difference between unsworn
 15 and sworn statements, correct?

16 A. Yes.

17 Q. And you understand the seriousness of sworn
 18 statements, correct?

19 A. Yes.

20 Q. Okay. And you understand that depositions are
 21 sworn testimony, correct?

22 A. Yes.

23 Q. And you understand that criminal trial
 24 testimony is sworn testimony, correct?

25 A. Yes.

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1 Q. Okay. And you understand that when someone
 2 speaks to a police officer, that is unsworn statements,
 3 correct?

4 A. Not necessarily. They -- those statements
 5 could be given under oath, as well.

6 Q. Okay. Are there any statements given under
 7 oath in the police reports in this case?

8 A. To the State Attorney --

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: I -- I would assume that the
 11 statements given to the State Attorney were under
 12 oath.

13 BY MR. SWAMINATHAN:

14 Q. Were they?

15 A. I believe they were.

16 Q. For purposes of your opinions, is it your
 17 understanding that the statements given to the State's
 18 Attorney were under oath?

19 MR. KIVETZ: Objection. Form. Foundation.

20 THE WITNESS: I believe they were. I can't be
 21 100 percent certain because I wasn't there and
 22 didn't know if they were sworn in, but I would
 23 assume that a formal statement taken by an
 24 Assistant State Attorney would be formal.

25 BY MR. SWAMINATHAN:

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1 Q. And when you were working in Miami, did you
 2 take sworn statements from witnesses?

3 A. Yes, sir.

4 Q. And when you were working in Miami, when you
 5 took sworn statements from witnesses, how was that done?

6 A. I would swear the witness in, or the court
 7 reporter would swear the witness in, or -- or one of the
 8 other supervisors or detectives.

9 Q. And then what would happen?

10 A. Then we would take a statement.

11 Q. And how would that be -- how would the
 12 statement be taken: Was it done by video, by audio, in
 13 writing? How was that done?

14 A. We did not have video when I was in Miami. It
 15 was either stenographically reported -- we had in-house
 16 stenographers that we could use. Or they would be tape
 17 recorded, or they could be handwritten. Either of the
 18 one, but no video at that time.

19 Q. In 1995 in Miami, were you using audio
 20 recordings to take statements from witnesses?

21 A. We had the ability to do so, and -- and they
 22 were taken at times, yes.

23 Q. Okay. And in 1995 in Miami, when you took
 24 audio-recorded statements, it's your testimony that you
 25 would take them as sworn statements. You'd swear the

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1 witness in and then take the statement; is that fair?

2 A. Yes, sir.

3 Q. Okay. And in -- and when you took written
 4 statements from witnesses in Miami, would you write the
 5 statements out or would the witness write their
 6 statements?

7 A. I would write the statement out.

8 Q. Would you ever have the witnesses write their
 9 own statements?

10 A. I can't remember a time when I did, but I -- I
 11 can't say never.

12 Q. When you took statements from witnesses in
 13 Miami, would you document what the witnesses told you?

14 A. It would be documented either by the
 15 stenographer, or the tape recorder, or in the -- in my
 16 written statement.

17 Q. And when you met -- when you spoke to
 18 witnesses in Miami, would it be the case that sometimes
 19 witnesses' stories would change over time?

20 A. Yes.

21 Q. And would you document all of the different
 22 changes to a witness's statement or just the portion
 23 that you liked?

24 A. What do you mean by the portion that I liked?

25 Q. Well, let me ask it this way. Would you -- if

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1 -- when -- as witnesses' stories shifted during the
 2 course of your interviews of a witness, would you
 3 document all of the different things that the witness
 4 told you or just some of what they told you?

5 MR. KIVETZ: Objection. Form. Foundation.
 6 Speculative. Incomplete hypothetical.

7 THE WITNESS: Yes. If a witness gave me a
 8 sworn statement, that would be my last contact with
 9 that witness, as far as questioning is concerned.
 10 Unless, later on, maybe there was a -- a -- a live
 11 lineup or something like that. But the -- the
 12 sworn statement that was given, however it was
 13 reported or documented, would end my conversation
 14 with that witness.

15 BY MR. SWAMINATHAN:

16 Q. And if, before the sworn statement, the
 17 witness gave you different information than what's
 18 contained in the sworn statement, would you document
 19 that anywhere?

20 MR. KIVETZ: Objection. Form. Foundation.
 21 Speculative. Incomplete hypothetical.

22 THE WITNESS: No. No, sir. Not necessarily,
 23 because I would -- if -- if -- if I knew that what
 24 the person was telling me, initially, had happened
 25 at 10:00 at night, when I knew that it happened at

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1 10:00 in the morning, I would continue interviewing
 2 that individual and find out why that discrepancy,
 3 so -- until I got to the final statement. And if
 4 the individual kept saying it was 10:00 in the
 5 morning, then so be it. That was -- that would be
 6 what was recorded, ultimately, in his or her
 7 statement.

8 BY MR. SWAMINATHAN:

9 Q. Okay. So in other words, if witnesses gave
 10 you information that was inconsistent with your
 11 understanding of the crime, you may not document some of
 12 that information, correct?

13 MR. KIVETZ: Objection. Form. Misstates his
 14 testimony.

15 THE WITNESS: That is correct. Until the --
 16 BY MR. SWAMINATHAN:

17 Q. And so you would -- go ahead. I'm sorry. Go
 18 ahead.

19 A. Until the -- the final statement, when I -- I
 20 believed or realized that that was what the person's
 21 statement was going to be, and then it would be
 22 memorialized in one way or another, then that -- that
 23 was his or her statement.

24 Q. Okay. And any prior statements that they'd
 25 given that were contrary to that, you wouldn't document

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1 those; is that fair?

2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: No, sir. I don't think I would
 4 document that.

5 BY MR. SWAMINATHAN:

6 Q. Okay. And for example, if a witness -- strike
 7 that. If a suspect denied involvement in a crime ten
 8 times, before, then, admitting to the crime, you
 9 wouldn't document the first ten times that they denied
 10 involvement; is that fair?

11 MR. KIVETZ: Objection. Form. Foundation.
 12 Speculative. Incomplete hypothetical.

13 THE WITNESS: Again, in -- and every case is
 14 different, and it depends on -- on the individual
 15 case, but I would -- it -- it goes without saying,
 16 as a homicide investigator, that when you go to
 17 interview an offender, he or she is going to
 18 initially deny that.

19 I -- I cannot recall a case when I sat down,
 20 advised an individual suspect of his or her rights,
 21 and the individual says, yeah, I did it, you're
 22 right. I just can't recall. I mean, maybe in a
 23 husband-and-wife situation where something
 24 happened, but they're -- 99 percent of the time,
 25 the individual is going to deny involvement. I --

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1 I don't feel the -- the need to document his or her
 2 denials.

3 BY MR. SWAMINATHAN:

4 Q. And it's -- and your practice, in your
 5 opinion, that there's not a need to document a suspect's
 6 series of denials before a subsequent admission, is
 7 consistent with generally accepted police practices?

8 MR. KIVETZ: Objection. Form. Foundation.
 9 Speculative. Incomplete hypothetical.

10 THE WITNESS: In my opinion, yes. I -- I know
 11 that later on, in deposition or trial testimony, if
 12 I am asked, did Mr. Smith deny shooting Mrs. Smith?
 13 I would say yes, of course, the denial -- he denied
 14 it for three hours during our interview, until he
 15 finally admitted what -- his participation and
 16 whatever he did. I mean, I wouldn't -- I would not
 17 hide his denials. Absolutely not.

18 BY MR. SWAMINATHAN:

19 Q. Well, you wouldn't include them in your police
 20 reports, though, under generally accepted police
 21 practices, correct?

22 A. I --

23 MR. KIVETZ: Objection. Form. Foundation.
 24 Speculative. Incomplete hypothetical.

25 THE WITNESS: I can't say that I would never

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1 include that in -- in my police report. Again,
 2 every case is different. Every situation is
 3 different. So I can't give you a definitive
 4 answer, that I would or would not, sir.

5 BY MR. SWAMINATHAN:

6 Q. Under generally accepted police practices, it
 7 is permissible to document a final admission or
 8 confession, but not document earlier denials; is that
 9 fair?

10 MR. KIVETZ: Objection. Form. Foundation.
 11 Speculative. Incomplete hypothetical.

12 THE WITNESS: No. You -- you used the word
 13 that -- that it's -- it's -- not permissible. It's
 14 -- again, is it a requirement, 100 percent, that it
 15 be done? No. Is it prohibited that it be done?
 16 No. So again, every situation, every case is -- is
 17 different, so I -- I can't answer that question
 18 definitively.

19 BY MR. SWAMINATHAN:

20 Q. What are the kinds of circumstances in which
 21 you should, under generally accepted police practices,
 22 document a witness's denials before a subsequent
 23 admission?

24 MR. KIVETZ: Objection. Form. Foundation.
 25 Speculative. Incomplete hypothetical.

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1 THE WITNESS: Again, you're asking me to -- to
 2 -- to provide you with a specific answer on when it
 3 would be or when it would not be. And without
 4 knowing details of the -- of the -- of the case, or
 5 the -- the incident, I can't answer that question,
 6 sir.

7 BY MR. SWAMINATHAN:

8 Q. I'm not asking you for any specifics. I'm
 9 asking you to give me any kind of circumstance in which
 10 you should, under generally accepted police practices,
 11 document a suspect's denials before a subsequent
 12 admission?

13 MR. KIVETZ: Objection --

14 MS. BARBER: That's not your previous
 15 question.

16 MR. SWAMINATHAN: Go ahead.

17 MR. KIVETZ: Objection. Form. Foundation.
 18 Speculative. Incomplete hypothetical.

19 THE WITNESS: I -- I -- I can't -- I can't
 20 give you a -- a -- a -- a specific time when it
 21 would be acceptable without knowing the
 22 circumstances of the case.

23 BY MR. SWAMINATHAN:

24 Q. Can you tell me any circumstances, under
 25 generally accepted police practices, when it would be

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1 acceptable not to document earlier denials before a
 2 subsequent admission?

3 A. It -- the same as my previous --
 4 MR. KIVETZ: Form. Foundation. Speculative.
 5 Incomplete hypothetical.

6 THE WITNESS: The same as -- as my previous
 7 answer. Without knowing the specifics of the case,
 8 I cannot answer that question.

9 BY MR. SWAMINATHAN:

10 Q. And if I understand your testimony correctly,
 11 it was your experience that individuals who are
 12 suspected or -- in crimes don't just immediately admit
 13 to it; is that what you said?

14 A. The overwhelming majority of the time, yes.
 15 That's correct.

16 Q. In other words, people typically deny
 17 involvement before ever making any kind of admission; is
 18 that fair?

19 MR. KIVETZ: Objection. Form. Foundation.
 20 Speculative. Incomplete hypothetical.

21 THE WITNESS: Again, the overwhelmingly --
 22 overwhelmingly, they do that. Yes.

23 BY MR. SWAMINATHAN:

24 Q. And based on your practices, as you've
 25 described them, it would often be the case that, if one

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1 were to look at Mr. Andreu's police reports from his
 2 investigations in Miami, one wouldn't necessarily get
 3 the full story of what happened during the investigation
 4 from your police reports, fair?

5 MR. KIVETZ: Objection. Form. Foundation.
 6 Speculative. Incomplete hypothetical.

7 THE WITNESS: No, sir. That's not necessarily
 8 true. My report may include that the individual
 9 denied it for four hours, but if -- if, in my
 10 report -- let me give you an example. My report, I
 11 -- I start talking to an individual at 9:00 in the
 12 morning, and my statement is taken at 5:00
 13 afternoon -- in the afternoon, it goes without
 14 saying that for those -- that period of time, he
 15 was in denial, or he was providing denials.
 16 (Coughs.) Excuse me.

17 BY MR. SWAMINATHAN:

18 Q. And it goes without saying that that person
 19 was probably interviewed multiple times during the
 20 course of those, you know, eight, nine hours; is that
 21 fair, too?

22 A. It could be --

23 MR. KIVETZ: Objection. Form. Hold on a
 24 second, everybody. Let's just slow down with this
 25 incredible hypothetical scenario here. Objection.

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1 Form. Foundation. Speculative. Incomplete
2 hypothetical.

3 THE WITNESS: Say that question again, please?
4 BY MR. SWAMINATHAN:

5 Q. Yeah. And in your example, you know, you've
6 got somebody in custody for eight to nine hours who's
7 your suspect. You said, we can safely assume that if
8 I've got that person in custody for eight to nine hours
9 before I got an admission, that they'd been denying up
10 to that point, correct?

11 MR. KIVETZ: Objection. Form. Foundation.
12 Speculative. Incomplete hypothetical.

13 THE WITNESS: That would make sense, that they
14 -- those -- that period of time, they were denying.

15 BY MR. SWAMINATHAN:

16 Q. And during that period of time, we can safely
17 assume that you were questioning the witness and had
18 gone into the room multiple times, but you're not
19 necessarily documenting every instance that you went
20 into the room; is that fair?

21 A. It --

22 MR. KIVETZ: Objection. Form. Foundation.
23 Speculative. Incomplete hypothetical.

24 THE WITNESS: It -- it could have been just
25 one continuous interview, or it could be several

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1 different interviews. They may have asked to go to
2 the restroom or something like that. There --
3 there is no way to -- to specify that. (Coughs.)
4 Excuse me.

5 BY MR. SWAMINATHAN:

6 Q. And in your conception of generally accepted
7 police practices, it would be acceptable to go into the
8 room multiple times and interrogate the same suspect,
9 fair?

10 MR. KIVETZ: Objection. Form. Foundation.
11 Speculative. Incomplete hypothetical.

12 THE WITNESS: Yes, sir.

13 BY MR. SWAMINATHAN:

14 Q. And, in fact, it was common when somebody
15 denied involvement, to leave and then come back and
16 question them again, correct?

17 MR. KIVETZ: Objection. Form. Foundation.
18 Speculative. Incomplete hypothetical. Do you need
19 a break to get some water, Mr. Nelson?

20 THE WITNESS: I do. Not -- not for water, but
21 I've been battling this -- these cough attacks for
22 a while. If we could take a break, I would
23 appreciate --

24 MR. SWAMINATHAN: Yeah. Why don't we take a
25 five-minute break? If you need ten minutes, we'll

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1 leave it up to you. All right.

2 THE WITNESS: Okay. Let me get ten minutes.

3 THE REPORTER: All right. We are off the
4 record. The time is 10:56 Central.

5 (OFF THE RECORD)

6 THE REPORTER: We are back on the record for
7 the deposition of Nelson Andreu being conducted by
8 videoconference. My name is Sydney Little. Today
9 is May 12th, 2023, and the time is 11:08 a.m.
10 Central.

11 BY MR. SWAMINATHAN:

12 Q. Mr. Andreu, have you ever been involved in
13 investigating allegations of wrongdoing by police
14 officers?

15 A. No, sir. I cannot remember any case where I --
16 I did any investigation like that.

17 Q. Okay. And during the course of your -- not
18 your expert career, but your law enforcement career, did
19 you ever have instances when you would investigate
20 officers to determine whether they should be disciplined
21 in any way?

22 A. Yes. And -- and I should back up and say,
23 when I was the captain and the chief in West Miami,
24 there -- there were some investigations that -- that I
25 did involving police officers. I was --

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1 Q. Were those in -- I'm sorry. Go ahead.

2 A. I was thinking of the City of Miami. But in
3 West Miami, since I was part of the administration, I
4 did participate in that.

5 Q. And how long were you in West Miami?

6 A. I believe 15 years.

7 Q. And were you -- did you work in Internal
8 Affairs or any other sort of department responsible for
9 discipline of police officers?

10 A. It was -- it was not technically called
11 Internal Affairs, but the chief at the time, when I was
12 the second in command, would assign me to investigate
13 some cases.

14 Q. Okay. And were those officer-involved
15 shooting cases or different types of cases?

16 A. No. None -- none -- none were officer-
17 involved shooting cases.

18 Q. Okay. And what were the types of cases that
19 you were asked to investigate when you were in West
20 Miami?

21 A. Improper conduct, false police reports -- all
22 -- not reports, but overtime slips and -- and things of
23 that nature.

24 Q. Did you ever investigate cases involving
25 allegations of misconduct by police officers towards

<p>1 civilians?</p> <p>2 A. Yes. At least one I --</p> <p>3 Q. And were there any --</p> <p>4 A. -- at least one that I can remember in West</p> <p>5 Miami.</p> <p>6 Q. Okay. And in that instance in West Miami, did</p> <p>7 you find that the officer had engaged in any misconduct</p> <p>8 towards a civilian?</p> <p>9 A. Yes. There were some -- some findings that</p> <p>10 that -- that there was improper conduct on his part.</p> <p>11 Q. And what were the findings of misconduct in</p> <p>12 that case?</p> <p>13 A. Sir, I don't remember.</p> <p>14 Q. Do you recall anything about what the findings</p> <p>15 were against the officer?</p> <p>16 A. No. It was -- again, without being certain,</p> <p>17 without going back and reviewing the case, I would think</p> <p>18 that he was discourteous, that type of a thing.</p> <p>19 Q. Okay. Any discipline as a result of that?</p> <p>20 A. He may have been reprimanded. I'm not</p> <p>21 100 percent sure of that.</p> <p>22 Q. When you were in West Miami, do you recall any</p> <p>23 instances in which your investigations into allegations</p> <p>24 of misconduct by police officers towards civilians</p> <p>25 resulted in any suspensions or firings?</p>	Page 58	<p>1 that fair?</p> <p>2 A. That's the one that I can remember now, yes.</p> <p>3 Q. When you were in the Miami Police Department -</p> <p>4 - how many years were you there?</p> <p>5 A. From 1980 to 2005, so 25.</p> <p>6 Q. So in the 25 years you were in the Miami</p> <p>7 Police Department, how many times did you recommend</p> <p>8 suspension or firing for a police officer based on</p> <p>9 misconduct towards a civilian?</p> <p>10 A. That was not part of my -- my job. We had a</p> <p>11 big Internal Affairs unit that would handle those types</p> <p>12 of things.</p> <p>13 Q. Okay. When you were in Miami, you did</p> <p>14 investigate officer-involved shootings, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And how many officer-involved shootings do you</p> <p>17 think you investigated while you were in Miami?</p> <p>18 A. A guess would be five, maybe as high as ten.</p> <p>19 Something like that.</p> <p>20 Q. In any of those five to ten officer-involved</p> <p>21 shootings that you investigated when you were in Miami,</p> <p>22 in any instance, did you find that the officer's conduct</p> <p>23 was not justified?</p> <p>24 A. That's not a decision that I make. We work in</p> <p>25 conjunction with the Internal Affairs unit and a</p>
<p>1 A. Yes. There were -- there were several</p> <p>2 suspensions and firings on my part.</p> <p>3 Q. In West Miami?</p> <p>4 A. Yes, sir.</p> <p>5 Q. For what kinds of issues?</p> <p>6 A. One that I can remember offhand was theft of -</p> <p>7 - I don't know if it would be City property. It was a -</p> <p>8 - an -- an individual officer that was -- went to buy</p> <p>9 uniforms, and instead of getting them for himself, got</p> <p>10 them for his father. The other one that I can remember</p> <p>11 was claiming having gone to court, and not really going</p> <p>12 to court, on several occasions, and filing for overtime.</p> <p>13 Q. Okay. And I may not have asked a clear</p> <p>14 question, so let me focus on my question here, which is</p> <p>15 going to be focused on police misconduct in the</p> <p>16 treatment of civilians, okay? So let me just ask the</p> <p>17 question, but I just want to make that clear. In your</p> <p>18 time in West Miami, were there any instances in which</p> <p>19 you recommended suspension or firing for an officer</p> <p>20 based on a finding of misconduct towards a civilian?</p> <p>21 A. Not suspension and firing that I can remember.</p> <p>22 But either counseling or reprimand, I -- I would say</p> <p>23 yes.</p> <p>24 Q. Okay. And that was the one instance in which</p> <p>25 you gave a verbal reprimand for discourteous conduct; is</p>	Page 59	<p>1 prosecutor from the State Attorney's office, so they --</p> <p>2 they would be the ones that would make that</p> <p>3 determination, not me.</p> <p>4 Q. And would you provide a recommendation?</p> <p>5 A. No. I would just submit my reports, and they</p> <p>6 would make that decision.</p> <p>7 Q. In any of those five to ten cases of officer-</p> <p>8 involved shooting that you investigated when you were in</p> <p>9 Miami, did you believe that the officer had engaged in</p> <p>10 misconduct in any of those cases?</p> <p>11 MR. KIVETZ: Objection. Form. Foundation.</p> <p>12 THE WITNESS: I cannot think of any offhand,</p> <p>13 but again, I -- I cannot be certain. I -- I don't</p> <p>14 know. I know that there were some cases that I was</p> <p>15 involved in in the periphery where the officers</p> <p>16 ended up getting arrested and going to trial. But</p> <p>17 again, those were not cases actually assigned to</p> <p>18 me, but that I've worked and handled, I've worked</p> <p>19 on and assisted on.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Were there any officer-involved shooting cases</p> <p>22 that you investigated in which you believed the shooting</p> <p>23 was not justified based on your involvement in the</p> <p>24 investigation?</p> <p>25 MR. KIVETZ: Objection. Form. Foundation.</p>

1 THE WITNESS: None that I can think of right
 2 now. No, sir.

3 BY MR. SWAMINATHAN:

4 Q. Were there any instances when you were in
 5 Miami or West Miami that you reported another officer
 6 for engaging in misconduct at any time?

7 MR. KIVETZ: Object -- sorry. Against a
 8 civilian?

9 BY MR. SWAMINATHAN:

10 Q. Yeah. That -- that's a good question. Let --
 11 yeah. Let me -- I want to focus on civilian, so let me
 12 ask you again. Were there any instances during the
 13 course of the time that you worked in Miami or West
 14 Miami that you reported another officer for misconduct
 15 in the treatment of a civilian?

16 A. Reported is not a -- a -- a -- a -- a good
 17 word for me, but I handled, and -- and -- and counseled,
 18 and -- and may have even reprimanded officers for -- for
 19 -- for that. But I wouldn't have -- I -- I wouldn't say
 20 I reported it to somebody else. I would've handled it
 21 myself, as a supervisor.

22 Q. Can you explain what you mean by that? As a
 23 -- in your supervisory capacity, you would have reports
 24 made to you of misconduct by officers, and then you
 25 would conduct some investigation; am I understanding

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1 certain, but I do not believe so.

2 Q. Are there any instances during the course of
 3 your law enforcement career in which you observed
 4 another officer commit misconduct during the course of a
 5 criminal investigation?

6 MR. KIVETZ: Objection to form. Foundation.

7 THE WITNESS: No, sir. I can't remember
 8 offhand, but I -- I -- again, I cannot be
 9 100 percent certain.

10 BY MR. SWAMINATHAN:

11 Q. Are there any instances during the course of
 12 your law enforcement career in which you reported
 13 another officer for deviating from accepted police
 14 practices during the course of a criminal investigation?

15 MR. KIVETZ: Objection to form. Foundation.

16 THE WITNESS: I would have to give the same
 17 answer. I can't recall anything right now, but I
 18 cannot be 100 percent certain.

19 BY MR. SWAMINATHAN:

20 Q. Okay. And during the course of your -- strike
 21 that. During the course of your time working as an
 22 expert, are there any instances in which you found that
 23 a police officer deviated from generally accepted police
 24 practices?

25 MR. KIVETZ: Objection. Form. Foundation.

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1 that correctly or not?

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2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: No. I wouldn't say that
 4 officers would -- would send me that information.
 5 It would be something that either I observed, or
 6 that came -- a complaint that would come in from a
 7 citizen, something like that, but it -- I don't
 8 think I got a report, ever, from an officer saying,
 9 you need to look at this.

10 BY MR. SWAMINATHAN:

11 Q. And during the course of your years, did you
 12 ever say to Internal Affairs, or a supervisor, or
 13 anybody else, hey, I believe this officer has engaged in
 14 misconduct in the course of their treatment of a
 15 civilian?

16 MR. KIVETZ: Objection. Form. Foundation.

17 THE WITNESS: I can't be 100 percent certain,
 18 but I do not believe so.

19 BY MR. SWAMINATHAN:

20 Q. Is there any time during the course of your
 21 law enforcement career that you reported to a
 22 supervisor, or to Internal Affairs, that another officer
 23 had committed misconduct during the course of an
 24 investigation?

25 A. Again, without -- cannot be 100 percent

1 THE WITNESS: Do you mean in cases that I have
 2 reviewed and documents that have been sent to me
 3 and -- by -- by attorneys?

4 BY MR. SWAMINATHAN:

5 Q. Yeah. Thank you for that clarification. So
 6 as an expert, tell me the kind of capacities in which
 7 you've worked as an expert, other than as a consultant
 8 in reviewing police files and offering opinions in
 9 lawsuits?

10 MR. KIVETZ: Objection --

11 THE WITNESS: No. That's -- that's the only
 12 type of expert work that I've done.

13 BY MR. SWAMINATHAN:

14 Q. Okay. Thank you. So in your capacity as an
 15 expert, are there any cases in which you found any
 16 deviations from generally accepted police practices by
 17 any officer?

18 A. No, sir. I can't say that -- that I have. I
 19 mean, again, if we look at some of the allegations that
 20 -- that have been made in some of the reports by
 21 Plaintiffs of police misconduct, those, if they were to
 22 be true, would be inconsistent with police practices.
 23 Again, I'm not -- I'm not offering an -- an opinion on -
 24 - on truth or -- or not truth, or who's telling the
 25 truth and who's not. Simply, that's up to the trier of

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1 facts. I'm just offering what my experience has been.
 2 Q. And in any of the cases that you've offered
 3 expert opinions in, has it been your opinion that the
 4 officers deviated -- that any of the officers deviated
 5 from generally accepted police practices?

6 A. There may have been things that could have
 7 been done differently. Sometimes things fall through
 8 the cracks. But as far as intentional misconduct, I
 9 have not seen, in any of the reports that I reviewed.

10 Q. In any of your reports as an expert, have you
 11 ever documented anything that the officers could have
 12 done differently?

13 MR. KIVETZ: Objection. Form. Foundation.

14 THE WITNESS: I -- without reviewing all the
 15 other reports, I -- I can't answer 100 percent, but
 16 I would say, yes, that -- that I have said that --
 17 that this could have been handled differently or
 18 that they could have done something additional.
 19 But then again, that happens to every detective in
 20 every case. You always have 20/20 vision, you
 21 know, the day after.

22 BY MR. SWAMINATHAN:

23 Q. In your report in the Thomas Sierra case, did
 24 you include anything in your report about things that
 25 you thought could be done differently?

1 A. I'd --

2 MR. KIVETZ: Objection. Form. Foundation.

3 THE WITNESS: I'd have to read it completely
 4 again, but I can't say for certain whether I did or
 5 not. If you'd like me to go through it?

6 BY MR. SWAMINATHAN:

7 Q. Yeah. Please go through it. Tell me if you
 8 identify any things that you think could have been done
 9 differently in your report?

10 MR. KIVETZ: Yeah. Okay.

11 MR. SWAMINATHAN: Hey, sorry, can we take a
 12 quick five-minute break, guys?

13 THE WITNESS: Sure.

14 MR. SWAMINATHAN: Thank you. I appreciate it.
 15 Sorry.

16 THE REPORTER: All right. We are off the
 17 record. The time is 11:21 --

18 (OFF THE RECORD)

19 THE REPORTER: We are back on the record for
 20 the deposition of Nelson Andreu being conducted by
 21 videoconference. My name is Sydney Little. Today
 22 is May 12th, 2023, and the time is 11:30 a.m.
 23 Central.

24 BY MR. SWAMINATHAN:

25 Q. Thank you, Mr. Andreu. I apologize for that.

1 My question that I had asked before we took a break was:
 2 Do you -- in your report in the Thomas Sierra case, do
 3 you identify any specific things that you think could be
 4 -- could have been done differently during the course of
 5 the Andujar homicide investigation?

6 A. No, nothing specific. On Page 9, Points 39
 7 and 40, I explained that no -- no homicide case is
 8 perfect or ever handled the same. But specifically
 9 pointing out things that would've been done different,
 10 no, sir.

11 Q. Okay. And do you, having had a chance to
 12 review all of the materials in this case, find that
 13 there are any things that could have been done
 14 differently in this case?

15 MR. KIVETZ: Objection. Form.

16 THE WITNESS: Probably -- I'm just trying to
 17 think of -- of anything specific that I would have
 18 done different. No, not -- not necessarily.
 19 Nothing's coming up right off the top of my head of
 20 anything that could be done different.

21 BY MR. SWAMINATHAN:

22 Q. When you reviewed all the documents and
 23 reports in this case, did you think to yourself that
 24 there was anything you saw in those documents that you
 25 would have done differently if you were conducting the

1 investigation?

2 MR. KIVETZ: Objection. Form. Foundation.
 3 THE WITNESS: No, sir. I can't recall
 4 anything right now that would've been done
 5 different. No.

6 BY MR. SWAMINATHAN:

7 Q. This is not the first case in which you have
 8 opined that involves Detective Reynaldo Guevara,
 9 correct?

10 A. Correct.

11 Q. And you understand that Detective Guevara has
 12 pleaded the Fifth with regard to his conduct during the
 13 course of this homicide investigation?

14 MR. KIVETZ: Objection. Form.

15 THE WITNESS: Yes.

16 BY MR. SWAMINATHAN:

17 Q. And you reviewed his deposition testimony in
 18 this case, correct?

19 A. Yes.

20 Q. Would it be a fair summary to say that he --
 21 when asked about every aspect of his involvement in this
 22 investigation, he pleaded the Fifth?

23 A. Yes.

24 Q. Okay. And did you consider that at all in
 25 forming your opinions in this case?

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1 A. Well, both Guevara and Halvorsen at one point
 2 in their depositions took the -- plead the Fifth. Again,
 3 to me, that's not an admission or a denial. It's simply
 4 no answer. Similar in fashion to when Sierra didn't
 5 testify at his trial. The -- the jury should not draw
 6 upon that, that he's lying or being truthful. It was
 7 simply no answer.

8 Q. So for your -- purposes of your opinions, you
 9 treated the pleading of the Fifth by Detectives Guevara
 10 and Halvorsen regarding their conduct in this case as
 11 basically being the equivalent of no answer, fair?

12 MR. KIVETZ: Objection. Form.

13 THE WITNESS: Yes, sir.

14 BY MR. SWAMINATHAN:

15 Q. Okay. And ultimately did you, in offering
 16 your opinions, include anywhere in your opinions that
 17 they had asserted the Fifth Amendment?

18 A. No, sir, I did not. I should add that
 19 Halvorsen, later on, did provide answers to questions on
 20 -- on deposition.

21 Q. In which case?

22 A. In this case.

23 Q. Mr. Halvorsen gave deposition testimony in the
 24 Thomas Sierra case?

25 MR. KIVETZ: Objection. Form.

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1 THE WITNESS: He -- he -- I -- I know that he
 2 later answered questions. I don't remember if it
 3 was a deposition or -- or where it was. But
 4 initially, they both invoked the Fifth, and that,
 5 to me, is just a no answer.

6 BY MR. SWAMINATHAN:

7 Q. Okay. And during the course of your career,
 8 in the many hundreds of times that you had been deposed
 9 and given testimony, did you ever plead the Fifth?

10 A. No, sir.

11 Q. Why not?

12 MR. KIVETZ: Objection. Form.

13 THE WITNESS: It never came up that that was
 14 and -- and the -- the State Attorney or Counsel
 15 never instructed me to do so.

16 BY MR. SWAMINATHAN:

17 Q. Did you ever consider pleading the Fifth in
 18 any case in which you testified?

19 MR. KIVETZ: Anand, you're talking about
 20 criminal cases, right?

21 MR. SWAMINATHAN: Yeah, thank you. In any
 22 criminal case in which you testified at deposition
 23 or at the criminal trial, did you ever consider
 24 pleading the Fifth?

25 MR. KIVETZ: Objection.

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1 THE WITNESS: No, sir. Not -- not that I can
 2 remember. No, sir.

3 BY MR. SWAMINATHAN:

4 Q. Why not?

5 MR. KIVETZ: Objection. Form.

6 THE WITNESS: As I explained before, I didn't
 7 believe the need [sic] my attorneys or the State
 8 Attorney did not instruct me to do so, so it -- it
 9 just never occurred.

10 BY MR. SWAMINATHAN:

11 Q. Do you have -- sitting here today, do you have
 12 any knowledge or understanding of how many convictions
 13 have been thrown out that were cases investigated by
 14 Detective Guevara and his colleagues at Area 5?

15 A. I know there were several. The -- the -- the
 16 number, I don't know.

17 Q. When you say several, what do you mean?

18 A. I don't know, a handful, I'm guessing.

19 Q. Your understanding is that there's
 20 approximately a handful of convictions that were thrown
 21 out involving Detective Guevara and his colleagues at
 22 Area 5?

23 MR. KIVETZ: Objection. Form. Foundation.

24 THE WITNESS: That's what I -- I believe, that
 25 number, more or less.

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1 BY MR. SWAMINATHAN:

2 Q. Okay. Is there any number of convictions
 3 being thrown out that would cause you to question the
 4 integrity of the underlying police investigation?

5 MR. KIVETZ: Objection. Form, foundation,
 6 speculative.

7 THE WITNESS: I don't think that a number,
 8 whether it is one or 100, go to the integrity of
 9 the investigations involved in this. There are
 10 reasons why people change their testimony, recant
 11 later on, make accusations of police misconduct or
 12 abuse. So just -- just a number, in my opinion,
 13 would not be a generalization to say that the
 14 police investigations were flawed.

15 BY MR. SWAMINATHAN:

16 Q. Is there any number of exonerations or
 17 convictions being vacated that would cause you to have
 18 pause about offering opinions that there were no
 19 violations of accepted police practices?

20 MR. KIVETZ: Objection. Form, foundation,
 21 speculative.

22 THE WITNESS: Again, no -- no number. I know
 23 that the -- the State Attorney in -- in Cook County
 24 has refused to prosecute or bring these cases back
 25 to trial for whatever reason she has. And that

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1 doesn't say that the case could not be proven
 2 again, they just -- or she just does not want to
 3 bring these cases forward again. So she is the one
 4 that's making that decision.

5 BY MR. SWAMINATHAN:

6 Q. Do you have an opinion about whether that was
 7 an appropriate decision?

8 A. Do I have an --

9 MR. KIVETZ: Objection. Form, foundations,
 10 speculative.

11 THE WITNESS: Ask that again, please. I'm
 12 sorry.

13 BY MR. SWAMINATHAN:

14 Q. Do you have an opinion about whether the Cook
 15 County State's Attorney's decision not to retry
 16 individuals whose cases involve Detective Guevara,
 17 whether that's a good decision or not?

18 MS. BARBER: Also calls for a legal
 19 conclusion.

20 MR. KIVETZ: Yeah. Objection. Form,
 21 foundation, speculative, and then calls for --

22 THE WITNESS: That's -- that's not a decision
 23 that's -- that's up to me to make, no, sir. I
 24 don't know.

25 BY MR. SWAMINATHAN:

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1 does not -- does not change for me.

2 BY MR. SWAMINATHAN:

3 Q. Okay. If there were 40 convictions thrown out
 4 involving Detective Guevara, would that cause you to
 5 have any pause about offering opinions that his work in
 6 the underlying investigations was good in each of those
 7 cases?

8 MR. KIVETZ: Objection. Form, foundation,
 9 asked and answered.

10 THE WITNESS: I've never been asked to opine
 11 on Detective Guevara or the allegations of abuse.
 12 So no, I'm not -- I can't answer that.

13 BY MR. SWAMINATHAN:

14 Q. In your report, are you intending to offer any
 15 opinions about whether Detective Guevara followed
 16 generally accepted police practices?

17 A. It's my opinion --

18 MR. KIVETZ: Objection to form.

19 THE WITNESS: It's my opinion that all the
 20 detectives involved in this case did.

21 BY MR. SWAMINATHAN:

22 Q. Okay. And is it your opinion that Detective
 23 Guevara followed generally accepted police practices in
 24 this case?

25 A. Yes, sir.

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1 Q. Do you have any opinions about it?

2 A. No, I don't have an opinion --

3 MR. KIVETZ: Objection. Form, foundation,
 4 speculative.

5 MR. SWAMINATHAN: And if Detective Guevara had
 6 been involved in a hundred cases that resulted
 7 in convictions being thrown out, would that cause
 8 you to have any pause about offering opinions that
 9 there were no deviations from accepted police
 10 practices?

11 MR. KIVETZ: Objection. Form, foundation,
 12 speculative, and --

13 THE WITNESS: No, sir. No, sir.

14 MR. KIVETZ: -- asked and answered.

15 THE WITNESS: Like I said, the number itself
 16 wouldn't -- wouldn't change for me.

17 BY MR. SWAMINATHAN:

18 Q. Okay. And so the fact that there have been
 19 approximately 40 convictions that have been thrown out
 20 in cases involving Detective Guevara, that's of no
 21 importance to you for purposes of your opinions about
 22 whether there were deviations from accepted police
 23 practices; is that fair?

24 MR. KIVETZ: Objection. Form.

25 THE WITNESS: No, the -- the number again,

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1 Q. And you reviewed the documents in the Arturo
 2 Reyes and Gabrielle Solache case, correct?

3 A. Yes, sir.

4 Q. And in that case, you found that Detective
 5 Guevara had not deviated from any generally accepted
 6 police practices, correct?

7 A. That is correct. Again, if you -- I did read
 8 the allegations being made by the plaintiffs in that
 9 case in which they allege misconduct, but I did not see
 10 it, other than those allegations.

11 Q. Okay. And you didn't -- and in the Reyes-
 12 Solache case, you did not credit any testimony of any
 13 witnesses indicating misconduct by Detective Guevara,
 14 fair?

15 MR. KIVETZ: Objection to form.

16 THE WITNESS: Again, I'm not here to judge
 17 who's telling the truth and who's not. I'm just
 18 saying that what I read, the totality of the
 19 investigation was properly conducted.

20 BY MR. SWAMINATHAN:

21 Q. Okay. Based on the assumption that, in fact,
 22 Mr. Guevara had not engaged in the misconduct that was
 23 alleged in that case, fair?

24 A. Yes.

25 Q. Okay. And in this case too, your opinion is

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1 based on the assumption that Mr. Guevara did not engage
 2 in any of the misconduct that's alleged in this case,
 3 correct?

4 MR. KIVETZ: Objection. Form.

5 THE WITNESS: Yes. I'm sorry, yes.

6 BY MR. SWAMINATHAN:

7 Q. Okay. And in this case, your opinions are
 8 based on the assumption that none of the other officers
 9 engaged in any of the misconduct that's alleged in this
 10 case, correct?

11 A. Yes.

12 Q. Okay. So did you ever conduct eyewitness
 13 identifications during your time as a police officer?

14 A. Yes, sir.

15 Q. And how did you go about conducting eyewitness
 16 identification procedures?

17 A. Primarily there were photo displays and on --
 18 on several occasions, they were actual live lineups, but
 19 primarily photo.

20 Q. In other words, when you say photo, you --
 21 you're referring of like what Chicago Police Department
 22 calls photo arrays?

23 A. Yes, sir.

24 Q. And so how would you go about conducting photo
 25 arrays?

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1 A. The police department had a folder with six
 2 cutouts with numbers underneath, and we would place a
 3 photograph in each of those four cutouts. One of them
 4 would be a photograph of the suspect.

5 Q. And so when you did photo procedures in Miami,
 6 you showed the witness a suspect plus three other
 7 photos?

8 A. No, five --

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: Five other photos. Six total.

11 BY MR. SWAMINATHAN:

12 Q. Okay. Thank you. And were you doing photo
 13 procedures -- strike that. Were you doing photo
 14 identification procedures in Miami in the 1990s?

15 A. Yes.

16 Q. And when you conducted photo identification
 17 procedures in Miami in the 1990s, you used six total
 18 photos; is that correct?

19 A. That is correct.

20 MR. KIVETZ: Objection. Form.

21 BY MR. SWAMINATHAN:

22 Q. And in that example, you would have one person
 23 who is your suspect, correct?

24 A. Yes.

25 Q. Would you ever conduct photo arrays in which

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1 you had -- all of the individuals in the lineup were
 2 suspects?

3 MR. KIVETZ: Objection. Form, foundation.

4 THE WITNESS: No, sir. I never did that.

5 BY MR. SWAMINATHAN:

6 Q. If you had multiple suspects in a case, would
 7 you include them in the same photo array when you were
 8 in Miami?

9 MR. KIVETZ: Objection. Form, foundation,
 10 speculative, incomplete hypothetical.

11 THE WITNESS: Probably not, but I can't say
 12 that it wasn't done. But more than likely no.

13 BY MR. SWAMINATHAN:

14 Q. But your practice -- strike that. Your
 15 practice in Miami was to -- when doing photo arrays, was
 16 to have one suspect and five fillers, correct?

17 MR. KIVETZ: Objection. Form and foundation.

18 THE WITNESS: Yes, sir.

19 BY MR. SWAMINATHAN:

20 Q. And the five fillers, were they individuals
 21 that you believed looked sufficiently similar to the
 22 suspect?

23 A. Yes. Not --

24 Q. And it was important to you -- I'm sorry, go
 25 ahead.

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1 A. Not twins, but sufficiently similar to not be
 2 biased.

3 Q. And so why was it important to have fillers
 4 that weren't -- that looked sufficiently similar?

5 A. To avoid a suppression of the lineup and the
 6 identification later on in trial and -- and just to make
 7 it fair.

8 Q. Okay. And when you conducted photo array
 9 procedures in the 1990s in Miami, your fillers were not
 10 other suspects; is that fair?

11 MR. KIVETZ: Objection. Form and foundation.

12 THE WITNESS: No, they were just photographs
 13 from our crime scene area where they had hundreds
 14 of them.

15 BY MR. SWAMINATHAN:

16 Q. Okay. When you conducted photo procedures in
 17 the 1990s, what instructions would you give the
 18 witnesses before you had them view the photo array?

19 MR. KIVETZ: Objection. Form and foundation.

20 THE WITNESS: Generally it was, I'm going to
 21 show you a group of photographs, see if there's
 22 anybody there that you recognize and from where. I
 23 would tell them that -- take into consideration
 24 that people have beards, they take their beards
 25 off. They have short hair, they have long hair,

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1 they change the color of their hair, just to look
 2 at the face of the individuals.

3 BY MR. SWAMINATHAN:

4 Q. And was there any kind of admonition form that
 5 you would read to the witnesses before they viewed photo
 6 arrays?

7 MR. KIVETZ: Objection. Form, foundation. And
 8 then in the entirety of the 1990s; is that what
 9 we're talking about?

10 MR. SWAMINATHAN: Yes, during the '90s.

11 MR. KIVETZ: -- 1990 to 1999?

12 THE WITNESS: I -- I believe that at one point
 13 those admonitions, like -- like I just said, were
 14 printed on the back of that six folder, but I can't
 15 tell you when that was. I'm not even 100 percent
 16 sure if it was ever done, but I just remember that
 17 in the back of my mind. But my words to the
 18 witness were usually basically what I just
 19 explained.

20 BY MR. SWAMINATHAN:

21 Q. Okay. And when you showed photo array to
 22 witnesses in the 1990s, would you tell them that the
 23 person that you believed committed the crime was in the
 24 photos?

25 MR. KIVETZ: Objection. Form, foundation,

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1 speculative.

2 THE WITNESS: I don't believe I ever said that
 3 to an individual.

4 BY MR. SWAMINATHAN:

5 Q. Would -- I'm sorry, go ahead.

6 A. No, to an individual.

7 Q. Why not?

8 MR. KIVETZ: Objection. Form.

9 THE WITNESS: I just didn't.

10 BY MR. SWAMINATHAN:

11 Q. When you were showing photo arrays in the
 12 1990s, would you tell the witnesses not to guess?

13 MR. KIVETZ: Objection. Form.

14 THE WITNESS: Ye -- yes, and sometimes the
 15 witness would say, well, this kind of looks like
 16 him or her, except for the hair or whatever. And
 17 I'd say, remember, don't look at the hair, just
 18 look at the face.

19 And if they did not give me 100 percent
 20 identification, then I would ask them, well, what,
 21 you know, give me a percentage of what you think
 22 that is. Again, that was, if they'd say 70 percent,
 23 that negated probable cause for an arrest, but it
 24 helped me in -- in continuing the investigation.

25 BY MR. SWAMINATHAN:

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1 Q. And would you document their level of
 2 confidence?

3 A. Yes.

4 Q. Was it your practice to document the level of
 5 confidence of the witnesses when they viewed photo
 6 arrays?

7 MR. KIVETZ: Objection. Form, foundation.
 8 From 1991 to 1999?

9 MR. SWAMINATHAN: Yeah, through the '90s.

10 THE WITNESS: I would have to say yes, there
 11 would be some kind of documentation.

12 BY MR. SWAMINATHAN:

13 Q. Did you admonish witnesses when they viewed
 14 lineups or photo arrays in the 1990s that the person who
 15 committed the crime may or may not be in the photo
 16 array?

17 A. I don't think I used those words, "may or may
 18 not be." I just didn't tell them he or she was in
 19 there. And I told them to, if they recognize anyone,
 20 which one, which number, and the circumstances behind,
 21 you know, what was -- where does he or she recognize
 22 that person from?

23 Q. When you conducted photo array procedures in
 24 the 1990s, would you document the fact that you'd shown
 25 photos to the witness, regardless of what the outcome of

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1 the lineup was?

2 MR. KIVETZ: Objection. Form. I don't really
 3 understand the question.

4 THE WITNESS: Yeah. If you could phrase that
 5 a different way, yes.

6 BY MR. SWAMINATHAN:

7 Q. Sure, Mr. Andreu. When you conducted photo
 8 array procedures in the 1990s, would you document the
 9 outcome of the photo array procedure, whether it
 10 resulted in a positive identification or a negative
 11 identification?

12 A. I would say more likely than not, yes.

13 Q. What do you mean by more likely than not?

14 A. Well, I -- I -- I can't remember every
 15 specific case that -- that I showed a photo array and
 16 there was or wasn't an identification. But I would say
 17 that normally, there would be a -- a documentation, but
 18 I can't say 100 percent of the time, because it's just
 19 too many of them, and I don't remember.

20 Q. If there were -- if the -- you showed a
 21 witness a photo array and they were not able to identify
 22 the suspect, was it your practice to document that?

23 A. Again, I --

24 MR. KIVETZ: Objection. Form.

25 THE WITNESS: Again, I've got to give the same

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1 answer, more likely than not, but I can't say
 2 100 percent that that would be documented. But I
 3 would -- I would try to, if I -- if -- if that
 4 would be the answer.

5 BY MR. SWAMINATHAN:

6 Q. In Miami, if you conducted photo arrays with
 7 witnesses, did you then conduct subsequent lineups with
 8 those witnesses, live lineups?

9 A. Not necess --

10 MR. KIVETZ: Objection. Form.

11 THE WITNESS: Not necessarily. I probably
 12 conducted no more than ten live lineups, 15 live
 13 lineups in -- in all the cases that I investigated.
 14 It was just a photo array.

15 BY MR. SWAMINATHAN:

16 Q. How many photo arrays do you think you
 17 conducted during the course of your time in Miami?

18 A. Oh, God, hundreds.

19 Q. Okay. And how many total live lineups did you
 20 say you conducted?

21 A. Five, ten, 15 at the most.

22 Q. Why didn't you conduct live lineups very
 23 often?

24 A. It was just what I was taught by -- by senior
 25 detectives, that's -- that's how it was done. The State

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1 Attorney's Office didn't have a requirement that that be
 2 done. And I think the times when I did do a live lineup
 3 was probably when the witness was 90 percent sure or
 4 something like that, and I wanted to actually have them
 5 view the person live to see if the individual that
 6 committed the crime was -- was in that group.

7 Q. So in the instances -- in the limited
 8 instances when you conducted live lineups, your
 9 recollection is that it was typically when the witness
 10 wasn't entirely certain in the photo array procedure,
 11 and so you wanted to see if they could develop more
 12 confidence in the live lineup; is that fair?

13 A. I wouldn't say all the time, but sometimes
 14 yes.

15 Q. Yeah. Other than the circumstance in which
 16 the witness wasn't sure during the photo array
 17 procedure, what are other circumstances in which you did
 18 a live lineup in Miami?

19 A. I -- I can't think of the specific reasons why
 20 it was done, no, not at this time.

21 Q. In your experience in Miami, was it that --
 22 did you find that it was harder to be able to conduct
 23 fair live lineups as compared to photo arrays where you
 24 have many, many more pictures that you can use to
 25 identify fillers?

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1 MR. KIVETZ: Objection. Form, foundation,
 2 speculative.

3 THE WITNESS: We usually used civilian
 4 employees. I know that in -- in my reading of
 5 Chicago cases, they go down to -- to the lockup and
 6 -- and, you know, bring up other inmates. We never
 7 did that. We don't -- our -- our -- our prisoner
 8 processing area, many times, was empty. You know,
 9 they tried to get them out of there and to the
 10 county jail as quick as possible. So we would go
 11 around the building and -- and choose civilian
 12 employees to put them in a lineup, usually.

13 BY MR. SWAMINATHAN:

14 Q. Okay. And that's -- would you agree with me
 15 that's not an ideal circumstance for trying to create a
 16 fair lineup?

17 MR. KIVETZ: Objection. Form, foundation,
 18 misstates his testimony.

19 THE WITNESS: I don't understand why you're
 20 saying --

21 BY MR. SWAMINATHAN:

22 Q. What is -- go ahead.

23 A. I don't understand why you say that that's not
 24 fair or proper.

25 Q. Yeah, I mean, conducting a live lineup with

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1 civilian employees in the department is going to give
 2 you a limited set of options for trying to create a
 3 lineup in which your fillers look sufficiently similar
 4 to your suspect; do you agree?

5 MR. KIVETZ: Objection. Form, foundation,
 6 speculative.

7 THE WITNESS: We had to do our best with what
 8 we had. But again, I don't know how many inmates
 9 that Chicago Police Department can have at one time
 10 in the lockup and how many of those are willing to
 11 participate in a -- in a lineup where there were
 12 hundreds of employees in the police department that
 13 we could choose from.

14 BY MR. SWAMINATHAN:

15 Q. How often -- strike that. You said that you
 16 probably conducted around ten to 15 total live lineups
 17 during your career in Miami. How often did you conduct
 18 live lineups with the witness after they had already
 19 previously viewed a photo array?

20 MR. KIVETZ: Objection. Form.

21 THE WITNESS: I can't provide you a number,
 22 whether it was done or it was not done. I -- I
 23 just simply don't remember.

24 BY MR. SWAMINATHAN:

25 Q. Can you recall any instances in which you

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1 conducted a photo array and obtained a positive
 2 identification and then conducted a subsequent live
 3 lineup with that same witness and the same suspect?

4 MR. KIVETZ: Objection. Form, foundation.

5 THE WITNESS: Again, I can't answer
 6 100 percent, but I'm sure that -- that between
 7 those five, ten, 15, it was probably done on -- on
 8 at least one occasion. I can't rule it out
 9 100 percent.

10 BY MR. SWAMINATHAN:

11 Q. Okay. And is it fair to say that in Miami,
 12 your typical practice was not to conduct a photo array
 13 with a witness viewing a suspect and then have that same
 14 witness view the same suspect in a live lineup
 15 afterward?

16 MS. BARBER: Objection. Form. Misstates the
 17 testimony.

18 THE WITNESS: No, I wouldn't say that that was
 19 policy. It was, like I said before -- I can't tell
 20 you how many times if it was done, if it was ever
 21 done, I just don't remember. But it wasn't a
 22 policy that I -- that I can remember.

23 BY MR. SWAMINATHAN:

24 Q. Thank you. Let me -- let me make sure my
 25 question is clear. Having a witness view a suspect in a

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1 photo array and then having that same witness view the
 2 same suspect in a live lineup, that was not a typical
 3 practice in Miami; is that fair?

4 A. Typical practice, again, is -- is -- is a
 5 broad -- is very broad. I just would -- would say that
 6 it did not happen often.

7 Q. Okay. And --

8 A. Would be a better answer.

9 Q. And during the course of your career, it was
 10 not your typical practice to conduct a photo array with
 11 a witness viewing a suspect and then have them view a
 12 subsequent lineup with that same witness viewing the
 13 same suspect; is that fair?

14 A. Well --

15 MR. KIVETZ: Objection. Form.

16 THE WITNESS: Come to think of it, I remember
 17 doing it one time on a -- on a very high-profile
 18 case. So it was done by me at least one time.

19 BY MR. SWAMINATHAN:

20 Q. And so it was not your typical practice; is
 21 that fair?

22 A. It -- I was not done every time. So if you
 23 want to say that's typical practice, then so be it.

24 Q. And in the one case where you do recall having
 25 a witness view the suspect in a photo array and then in

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1 a live lineup, what was the reason you did that?

2 A. It was a person who viewed her parents killed
 3 when she was, like, 10 years old. And we identified the
 4 suspect when she was like, I don't know, 15 or 20 years
 5 old. She was -- she viewed a lineup and asked, if -- if
 6 I'm not mistaken, she's the one that asked, can I
 7 actually see the person, and we conducted a live lineup
 8 in that instance.

9 Q. In the 1990s, would you agree with
 10 Mr. Tiderington that it was known in police departments
 11 that there was this phenomenon of false identifications?

12 MR. KIVETZ: Objection. Form.

13 THE WITNESS: Aware is, again, is a -- is a
 14 broad word. I never experienced that in the
 15 hundreds of cases that -- that I investigated. So
 16 -- or that anyone that worked for me investigated.

17 BY MR. SWAMINATHAN:

18 Q. When you say you never experienced that, never
 19 experienced what?

20 A. I never experienced a witness identify,
 21 falsely, a -- a suspect.

22 Q. As far as you know?

23 MR. KIVETZ: Objection. Form, foundation.

24 THE WITNESS: I don't know what you mean by as
 25 far as I know.

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1 BY MR. SWAMINATHAN:

2 Q. Well, are you saying that in every single
 3 instance, you can say with certainty that the witness's
 4 identification was accurate?

5 MR. KIVETZ: Objection. Form.

6 THE WITNESS: Yes, I can say that because it
 7 was backed up either by another witness, physical
 8 evidence, a confession, something like that.

9 BY MR. SWAMINATHAN:

10 Q. How often during the course of your career
 11 would you close a case based on only eyewitness
 12 identifications?

13 MR. KIVETZ: Objection. Form, foundation.

14 THE WITNESS: I -- I can't say that. I know
 15 it happened, but I can't give you a number.

16 BY MR. SWAMINATHAN:

17 Q. Were there any cases in which you -- during
 18 the course of your career, where you determined that
 19 eyewitness identifications were not going to be
 20 reliable?

21 A. No, sir. I can't say I did.

22 Q. Were there -- are there any circumstances,
 23 based on your experience, where you would say that's
 24 just a circumstance in which it would be too difficult
 25 for somebody to make a reliable identification?

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1 MR. KIVETZ: Objection. Form, foundation,
2 speculative, incomplete hypothetical.

3 THE WITNESS: Explain that to me again,
4 please.

5 BY MR. SWAMINATHAN:

6 Q. Yeah. Like is there -- in your -- from your
7 experience, would you say, well, look, if a person is
8 500 yards away, they could not possibly make a reliable
9 identification?

10 MR. KIVETZ: Objection. Form, foundation,
11 speculative.

12 THE WITNESS: If someone was 500 yards away, I
13 wouldn't even bother to show them a lineup.

14 BY MR. SWAMINATHAN:

15 Q. So during the -- so as an investigator, you
16 would make assessments about whether you thought the
17 witnesses were in a position to be able to make
18 identifications; is that fair?

19 MR. KIVETZ: Objection. Form.

20 THE WITNESS: I would say an assessment was
21 made, yes.

22 BY MR. SWAMINATHAN:

23 Q. Yeah. And really any time as a detective or
24 investigator that you were speaking with witnesses,
25 you're assessing those witnesses and their credibility;

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1 is that fair?

2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: Yes. To some extent, yes.

4 BY MR. SWAMINATHAN:

5 Q. Okay. And that's part of your job as a police
6 officer, to try to assess whether the people who are
7 telling you things are telling you the truth or not,
8 fair?

9 MR. KIVETZ: Objection. Form, foundation.

10 THE WITNESS: Correct.

11 BY MR. SWAMINATHAN:

12 Q. And as a police officer, when you spoke with
13 witnesses, part of what you were doing was assessing
14 whether the information they were giving you was
15 inconsistent with other information that you knew about
16 the case; is that fair?

17 MR. KIVETZ: Objection. Form.

18 THE WITNESS: Yes, that's fair.

19 BY MR. SWAMINATHAN:

20 Q. And that's one of the ways that you would
21 assess whether or not the witnesses were giving you
22 truthful or reliable information, correct?

23 MR. KIVETZ: Objection. Form.

24 THE WITNESS: One of the ways, yes.

25 BY MR. SWAMINATHAN:

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1 Q. And when you were speaking with eyewitnesses,
2 when you would ask them about the circumstances of what
3 they had observed, you'd be making assessments about
4 whether or not you thought they could make a reliable
5 identification of a suspect; is that fair?

6 MR. KIVETZ: Objection. Form.

7 THE WITNESS: Yes, you could say that's fair
8 most of the time, yes.

9 BY MR. SWAMINATHAN:

10 Q. And when you interviewed eyewitnesses, would
11 you ask them if they could identify the perpetrator?

12 MR. KIVETZ: Objection. Form.

13 THE WITNESS: I -- not all the time, but that
14 could be asked. I mean, if -- if, for example,
15 there's a -- a bank robbery-murder and there's ten
16 people in the -- in the lobby standing 20 feet away
17 from the guy, I -- I wouldn't have to ask them. I
18 would -- I would assume that they could make an
19 identification.

20 BY MR. SWAMINATHAN:

21 Q. So are there certain -- are you saying that
22 your practice was to typically ask eyewitnesses if they
23 could make an identification, or not?

24 MR. KIVETZ: Objection. Form.

25 THE WITNESS: No, no, not necessarily. If I

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1 believe that they could make an identification,
2 that -- that there -- there were times where the --
3 like the example you gave, they're 500 yards away,
4 the witness says there's, you know, there's no way
5 I can identify, I didn't see his face, or her face.

6 BY MR. SWAMINATHAN:

7 Q. Were there certain -- what are the kinds of
8 circumstances in which, as a police officer, you'd make
9 the determination that this is not a circumstance in
10 which the person can make a reliable identification?

11 MR. KIVETZ: Objection. Form, speculative.

12 THE WITNESS: Again, speculating, it would be
13 your example of 500 yards away, the individual was
14 wearing a mask. That's just two examples. I'm
15 sure there are others.

16 BY MR. SWAMINATHAN:

17 Q. Okay. So distance would be a kind of thing
18 you would take into consideration in terms of whether or
19 not your witness could make an identification; is that
20 fair?

21 A. Distance is one, yes.

22 Q. And whether or not the face was exposed or
23 visible is another factor you'd take into consideration
24 in terms of whether your witness could make an
25 identification; is that fair?

<p style="text-align: right;">Page 98</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. And lighting is another factor that you take</p> <p>5 into consideration; is that fair?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: Yes, lighting would be another</p> <p>8 factor.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. And so, for example, if it was a significant</p> <p>11 distance or it was -- well, strike that. The amount of</p> <p>12 time to view the person's face, is that another factor</p> <p>13 you take into consideration in assessing whether --</p> <p>14 MR. KIVETZ: Objection. Form, speculative.</p> <p>15 MR. SWAMINATHAN: -- you're able to make an</p> <p>16 identification?</p> <p>17 THE WITNESS: Not necessarily. Some people</p> <p>18 can see a face for two seconds and make an</p> <p>19 identification. Other people can see it for five</p> <p>20 minutes and not make an identification. Nothing is</p> <p>21 etched in stone.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. And did you take into consideration whether</p> <p>24 the witness was viewing somebody who they knew or was</p> <p>25 familiar to them or versus whether they were a stranger?</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: At times, I would say, would be</p> <p>3 the best answer.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Okay. Now, as a police practices expert, were</p> <p>6 there anything about the circumstances of the Andujar</p> <p>7 shooting that would cause you to have any concerns about</p> <p>8 the ability of the witnesses to make an identification?</p> <p>9 A. No.</p> <p>10 Q. Okay. Was there anything in this case about</p> <p>11 the circumstances that would cause you to believe that</p> <p>12 those witnesses would not be able to make a reliable</p> <p>13 identification of the perpetrator?</p> <p>14 A. No, sir.</p> <p>15 Q. Did you -- were you aware when you offered</p> <p>16 your opinions in this case that the shooter's car had</p> <p>17 tinted windows?</p> <p>18 A. Yes, I read that in the reports.</p> <p>19 Q. And did you accept that as true for purposes</p> <p>20 of your opinions?</p> <p>21 A. Did I do what, sir, I'm sorry?</p> <p>22 Q. Did you accept as true the fact that shooter's</p> <p>23 car had tinted windows?</p> <p>24 A. Yes, but the description of the tinted windows</p> <p>25 was a light-tint, and they were able to see the</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. KIVETZ: Objection. Form, speculative.</p> <p>2 THE WITNESS: Well, if the person was known to</p> <p>3 them, like their next door neighbor that they'd</p> <p>4 seen, you know, every day for the past 12 years, I</p> <p>5 wouldn't even put that in the lineup. I'd show</p> <p>6 them a single photo. If it's his brother, cousin,</p> <p>7 you know, whatever, no need for a lineup.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. And would you agree with the idea that when</p> <p>10 someone's making an identification of someone familiar</p> <p>11 to them or known to them, that's a more reliable</p> <p>12 identification circumstance than when somebody is trying</p> <p>13 to identify a stranger's face?</p> <p>14 MR. KIVETZ: Objection. Form.</p> <p>15 THE WITNESS: Probably, but I -- I -- I</p> <p>16 wouldn't, again, say 100 percent and not etch that</p> <p>17 in stone. Sometimes they know who they are and</p> <p>18 they just don't want to identify for whatever</p> <p>19 reason they may have.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. And as a police officer, it sounds like what</p> <p>22 you're describing is your practices were different in</p> <p>23 the instances of a -- of a familiar identification</p> <p>24 procedure rather than a stranger identification</p> <p>25 procedure; is that fair?</p>	<p style="text-align: right;">Page 101</p> <p>1 individual put the -- throw the gang signs down, put a</p> <p>2 hood over his head. So they were able to see through</p> <p>3 the light tint.</p> <p>4 Q. So the idea that the windows were light-tinted</p> <p>5 as opposed to dark-tinted, that was important to you as</p> <p>6 you considered whether or not these witnesses could make</p> <p>7 identifications; is that fair?</p> <p>8 MR. KIVETZ: Objection.</p> <p>9 THE WITNESS: Yes, the -- the -- the -- being</p> <p>10 -- being that they were light tints, I mean, if</p> <p>11 they were limo tints, they wouldn't have been able</p> <p>12 to see any of the actions that took place inside</p> <p>13 the car.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Okay.</p> <p>16 A. But since they explained in their statements</p> <p>17 that they saw the -- the -- the, especially the shooter</p> <p>18 do something and they were able to count the number of</p> <p>19 individuals that were in the car, the -- the tints were</p> <p>20 sufficiently light to allow them to observe that.</p> <p>21 Q. And so ultimately, fair to say that one of</p> <p>22 your opinions in this case is that the circumstances of</p> <p>23 the shooting were such that these eyewitnesses,</p> <p>24 Mr. Rodriguez and Mr. Melendez, could make a reliable</p> <p>25 identification?</p>

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1 A. Yes, sir. I think they -- they -- they were
2 in the position to make that identification.

3 Q. Okay. And tell me all the circumstances of
4 the shooting that factored into your opinion that the
5 witnesses could make reliable identification in this
6 case.

7 A. As I just explained a moment ago, they were
8 able to see the number of individuals that were in the
9 offending vehicle. They were able to see the actions of
10 the shooter with the hand signs and putting up of the
11 hoodie. They -- they viewed hundreds of photographs.
12 They never told the detectives, I can't identify, why
13 are you making me look at all these gang books? Those
14 were the things that -- that led me to opine that they
15 could make an identification.

16 Q. Anything else?

17 A. Not that I can think of right now, sir.

18 Q. Did you take into consideration the general
19 offense case report, the initial report written by the
20 paper car, Mr. Trempe?

21 A. I -- I read Mr. Trempe's report, yes.

22 Q. And you read his deposition too, correct?

23 A. Yes.

24 Q. And what conclusions did you draw from
25 reviewing his report about the witness's ability to make

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1 an identification?

2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: I can't remember his specific
4 testimony, but I don't remember him saying the
5 witnesses told me they couldn't identify or
6 anything like that.

7 MR. SWAMINATHAN: I'm going to mark the
8 investigative file from this case as Exhibit 2.
9 Let me mark it first.

10 (EXHIBIT 2 MARKED FOR IDENTIFICATION)

11 BY MR. SWAMINATHAN:

12 Q. All right, sir, I'm showing you a document I
13 marked as Exhibit 2. This is the investigative file
14 from the Sierra case. It's Bates-stamped RFC-Sierra 1
15 through --

16 THE WITNESS: You --

17 MR. SWAMINATHAN: -- just one thing, let me
18 just identify it for you. It's RFC-Sierra 111
19 through RFC-Sierra 178. You reviewed the
20 investigative file from this case, correct, sir?

21 THE WITNESS: No --

22 MR. SWAMINATHAN: I think you're cutting out.

23 THE WITNESS: -- I don't know if it's -- I
24 don't know if it's my end or your end.

25 MR. SWAMINATHAN: Jeff, are you able to hear

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1 me normal?

2 MR. KIVETZ: Yeah, I can hear you normal. And
3 then I --

4 MR. SWAMINATHAN: So I think -- go ahead.

5 MR. KIVETZ: I just heard Nelson come back in,
6 but I can't tell if he's -- can you just drop the
7 exhibit for a second and see if it works?

8 MR. SWAMINATHAN: Yeah. Mr. Andreu, can you
9 just do a little test?

10 THE WITNESS: See, I -- I can hear you, but I
11 cannot hear Arnad [sic]. See his mouth moving, but
12 I can't hear what he's saying.

13 MR. SWAMINATHAN: Are you talking about me?
14 Can you hear me now?

15 THE WITNESS: I can hear you.

16 MR. KIVETZ: Can you hear me now, Mr. Andreu?

17 THE WITNESS: Now I can, yes.

18 MR. SWAMINATHAN: Okay.

19 THE REPORTER: I don't have a video of Mr.
20 Andreu. Oh, there he is. Okay. Okay.

21 BY MR. SWAMINATHAN:

22 Q. Okay. Let's try again. You can hear me now,
23 Mr. Andreu?

24 A. Yes, sir.

25 Q. Okay. I'm showing you now a document we've

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1 marked as Exhibit 2, identify it by Bates stamps for the
2 record. This is the investigative file from the Andujar
3 homicide.

4 A. When you -- (audio cuts out) -- the document
5 up - (audio cuts out) -- on and goes - (audio cuts out)
6 -- end.

7 Q. That is very unusual. I have not had this
8 problem before.

9 A. Yeah. See, and the video is choppy and I
10 cannot hear it. And black --

11 MR. SWAMINATHAN: Yeah, his video is going
12 entirely choppy now.

13 MR. KIVETZ: Yeah. Seems like it's every time
14 you throw up --

15 THE REPORTER: Would you like to go off the
16 record and see if we can figure it out real quick?

17 MR. SWAMINATHAN: Yeah.

18 MR. KIVETZ: Yep.

19 THE REPORTER: Okay. We're off the record.
20 The time is 12:08.

21 (OFF THE RECORD)

22 THE REPORTER: We are back on the record for
23 the deposition of Nelson Andreu being conducted by
24 videoconference. My name is Sydney Little. Today
25 is May 12th, 2023, and the time is 12:19 p.m.

<p>1 Central.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay, sir. We are looking at Exhibit 2, which</p> <p>4 is the Sierra investigative file.</p> <p>5 A. Okay.</p> <p>6 Q. I'd like you to take a look at Page RFC-Sierra</p> <p>7 159, which is the General Offense Case Report. Let me</p> <p>8 know when you're there, please.</p> <p>9 A. Okay. 150 -- okay, 159.</p> <p>10 Q. Yeah. Thank you. You see that document, the</p> <p>11 General Offense Case Report?</p> <p>12 A. It says "General Offense Case Report." Yes.</p> <p>13 Q. Yes. And you understood, when you reviewed</p> <p>14 these reports, that this is the original report filled</p> <p>15 out by the patrol officer who arrives at the scene,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And this was prepared by Mr. Trempe,</p> <p>19 who you indicated that you had reviewed his deposition,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And in this General Offense Case</p> <p>23 Report, there is a section in which the offender's</p> <p>24 descriptions are provided, correct?</p> <p>25 A. Yes, I believe so.</p>	<p>Page 106</p> <p>1 A. Yes.</p> <p>2 MR. KIVETZ: Objection to form.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. So you understood that when Mr. Trempe</p> <p>5 interviewed Mr. Melendez and Mr. Rodriguez at the scene,</p> <p>6 other than identifying that the individuals were males</p> <p>7 and that they were white Hispanics and Black, there was</p> <p>8 no further description that they were able to provide to</p> <p>9 the scene officer. Did you understand that when you</p> <p>10 offered your opinions?</p> <p>11 MR. KIVETZ: Objection. Form.</p> <p>12 THE WITNESS: I don't know if it was that they</p> <p>13 could not offer additional -- they just didn't</p> <p>14 provide Officer Trempe with any additional</p> <p>15 information.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. And what was your understanding when you</p> <p>18 offered your opinion in this case about whether Mr.</p> <p>19 Trempe asked them for additional description of</p> <p>20 information?</p> <p>21 MR. KIVETZ: Objection to form.</p> <p>22 THE WITNESS: Say that again, please?</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Yeah. What was your understanding when you</p> <p>25 offered your opinions in this case about whether Mr.</p>
<p>Page 107</p> <p>1 Q. Okay. In the middle section where it lists</p> <p>2 offender's name or describe clothing, et cetera, it</p> <p>3 indicates number 1 and number 2, and it lists NFD. Do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And what does NFD stand for?</p> <p>7 A. I believe, no further description.</p> <p>8 Q. Okay. And so in that section, the only</p> <p>9 information that was provided by Mr. Melendez and</p> <p>10 Mr. Rodriguez to Mr. Trempe was that it was a male,</p> <p>11 white Hispanic, were the -- were perpetrators 1 and 2;</p> <p>12 is that correct?</p> <p>13 A. That's what I believe it says there, yes.</p> <p>14 Q. Okay. And then it says that the third person</p> <p>15 in the offender's vehicle, down in the section below, it</p> <p>16 indicates was a male, Black, correct?</p> <p>17 A. Yes. It -- actually in the narrative portion.</p> <p>18 Okay.</p> <p>19 Q. Yes. And it says "M/1," which you understood</p> <p>20 to mean that offender number 3 was described by</p> <p>21 Mr. Melendez and Mr. Rodriguez as a male Black, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And the description that Mr. Melendez</p> <p>24 and Mr. Rodriguez were able to provide to Mr. Trempe was</p> <p>25 no further description, correct?</p>	<p>Page 109</p> <p>1 Trempe asked them for additional descriptive</p> <p>2 information?</p> <p>3 MR. KIVETZ: Objection to form.</p> <p>4 THE WITNESS: I don't remember, in -- in his</p> <p>5 deposition if -- if he said that he had asked them</p> <p>6 for additional descriptors or not, but in any --</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. Would it matter -- I'm sorry. Go ahead.</p> <p>9 Sorry.</p> <p>10 A. In -- in any event, like I -- I outlined in my</p> <p>11 report, or explained in my report, I -- I would not</p> <p>12 expect the uniformed officer on one of my cases to get</p> <p>13 detailed information on -- on the suspects in the case.</p> <p>14 That's for detectives to do subsequent to their -- their</p> <p>15 being out -- off the scene and in the homicide office.</p> <p>16 So to put that they were Latin males and no other</p> <p>17 description and a -- a Black male and no other</p> <p>18 description doesn't surprise me.</p> <p>19 Q. So your practice was to deliberately have</p> <p>20 patrol officers not learn descriptive information from</p> <p>21 eyewitnesses at a scene; is that correct?</p> <p>22 A. No, I --</p> <p>23 MR. KIVETZ: Objection. Form. Foundation.</p> <p>24 Misstates his testimony.</p> <p>25 THE WITNESS: I -- I didn't say deliberately.</p>

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1 I just said that they get the -- the -- the minimal
 2 information that they need to complete their
 3 report. I had people going on murder scenes and
 4 they were so -- the uniformed cop was so determined
 5 to get the victim's name that he is pulling a
 6 wallet out of his -- that dead guy's pocket to get
 7 his name from his driver's license.

8 I didn't want them doing that. Document what
 9 you have and whatever the witnesses tell you, but
 10 don't go questioning them. That's a detective's
 11 role.

12 BY MR. SWAMINATHAN:

13 Q. How long after Mr. Trempe arrived at the scene
 14 did the detectives arrive at the scene?

15 MR. KIVETZ: Objection to form.

16 THE WITNESS: It wasn't a long -- from what --
 17 from what I remember, it was not a long time.

18 BY MR. SWAMINATHAN:

19 Q. Do you have any idea?

20 A. Again, I -- I could go back and review it, but
 21 I would say within -- well within an hour, half hour.

22 Q. And so in this case, the perpetrators fled,
 23 correct?

24 A. Yes.

25 Q. Would it be valuable to get descriptive

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1 descriptive information as he could from the
 2 eyewitnesses about the descriptions of the perpetrators,
 3 would that have any impact on your opinions in this
 4 case?

5 MR. KIVETZ: Objection to form.

6 THE WITNESS: No, not -- not necessarily.

7 BY MR. SWAMINATHAN:

8 Q. I'm not asking whether not -- necessarily or
 9 not. They did do -- does it have it -- would it have
 10 any impact on your opinions? Yes or no?

11 A. No.

12 MR. KIVETZ: Objection to form.

13 THE WITNESS: No.

14 BY MR. SWAMINATHAN:

15 Q. Okay. And so is it fair to say, for purposes
 16 of your opinions, you did not consider the idea that
 17 Mr. Trempe had asked for as much descriptive information
 18 as he could, and that what's contained in the General
 19 Offense Case Report is as much information as the
 20 witnesses were able to provide; is that fair?

21 MR. KIVETZ: Objection. Form. Misstates his
 22 testimony.

23 THE WITNESS: Well, I don't know if -- Trempe
 24 may say that he -- he -- he attempts to get as much
 25 information as he can. Doesn't specify that --

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1 information to try to see if you could catch the
 2 perpetrators?

3 MR. KIVETZ: Objection to form.

4 THE WITNESS: The description -- the
 5 description of the vehicle -- again, if they
 6 would've said they're -- they're 20 --
 7 approximately 23 years old and they have black
 8 hair, wearing shorts and a white T-shirt, that's
 9 probably half the population in Chicago, so I don't
 10 know if that would be sufficient.

11 If he -- if he was wearing a -- a Mickey Mouse
 12 outfit, well, then that would narrow it down. I'm
 13 just giving examples. But to put out the
 14 description of the car occupied by three males, I
 15 believe, is sufficient information for the other
 16 officers to be on the lookout for -- for this
 17 vehicle and these occupants.

18 BY MR. SWAMINATHAN:

19 Q. And if Mr. Trempe testified that it was his
 20 practice to collect as much descriptive information as
 21 he could from the witnesses, do you discredit that
 22 testimony?

23 A. No, I wouldn't discredit his testimony.

24 Q. And if Mr. Trempe testified that he would
 25 deliberately make it a point to gather as much

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1 that's what happened in this case. Also, you have
 2 to take into account these witnesses just
 3 experienced a -- a traumatic event.

4 And how much do they give the officer at this
 5 time? Again, sometimes gangs want to retaliate.
 6 So there's -- there's several things that could go
 7 into why this is the only description in Officer
 8 Trempe's report.

9 BY MR. SWAMINATHAN:

10 Q. Okay. And ultimately, the fact that -- strike
 11 that. Ultimately, the fact that the only description
 12 that's provided in the General Offense Case Report for
 13 Mr. Trempe is that the offenders were male white
 14 Hispanics and a male Black with no further description
 15 was not relevant, from your perspective, in offering
 16 your opinions in this case; is that fair?

17 MR. KIVETZ: Objection. Misstates his
 18 testimony.

19 THE WITNESS: No.

20 BY MR. SWAMINATHAN:

21 Q. You said -- is that is that is that fair or
 22 not?

23 MR. KIVETZ: He said no.

24 THE WITNESS: I said no.

25 BY MR. SWAMINATHAN:

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1 Q. Okay. And so it was relevant to you?
 2 A. I said no. No, sir.
 3 Q. I think that's why we're getting confused. Was
 4 it relevant to you that no further description was
 5 provided by these witnesses in the General Offense Case
 6 Report?

7 MR. KIVETZ: Objection. Form. I'm confused.

8 Like, I don't know what you're asking. I don't
 9 know what you're asking.

10 BY MR. SWAMINATHAN:

11 Q. Go ahead, Mr. Andreu. Okay. I think we were
 12 maybe talking past each other. Was it relevant to you?

13 A. No.

14 Q. Okay. Thank you. Let's look at --

15 MR. KIVETZ: I'm just going to object to the
 16 form of the last question.

17 BY MR. SWAMINATHAN:

18 Q. Let's take a look at the -- your list of
 19 materials reviewed in your report, beginning at the
 20 bottom of Page 3.

21 A. Okay.

22 Q. Looking through your list of materials
 23 reviewed from the bottom of Page 3 through Page 5, are
 24 there any items missing from your list of materials
 25 reviewed?

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1 A. No, sir. I -- I believe -- I believe that's
 2 an accurate list of what I reviewed.

3 Q. Is there anything that you reviewed in
 4 offering your opinions in this case that's not included
 5 in this list?

6 A. The -- I -- I -- you're asking me to go
 7 through a list and remember what I read months ago. I
 8 believe that when I compiled this list, it was an
 9 accurate list of what I -- but, you know, I -- I
 10 wouldn't put my head in a guillotine and say that, but I
 11 believe it to be.

12 Q. Okay. In other words, when you look at this
 13 list, you don't -- you can't think of something that you
 14 think you reviewed that's not listed here; is that fair?

15 A. I -- I don't believe so, yes.

16 Q. Okay. And is there anything that you reviewed
 17 that was new, after offering this report and before this
 18 deposition?

19 A. Ask that question again, please?

20 Q. Yeah. Did you review anything additional
 21 after creating this report, relevant to this case?

22 A. No. I don't -- I didn't receive any other
 23 information.

24 Q. Okay. And is it fair to say that your
 25 opinions are based on this set of reports that's listed

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1 in your materials reviewed?

2 A. That is correct.

3 Q. Is there anything else that you reviewed as a
 4 reference or otherwise for purposes of offering your
 5 opinions in this case?

6 A. No, sir. I don't believe so. This is the
 7 entirety of the list.

8 Q. Okay. And so is your report, when you drafted
 9 it, was it based on the things listed in this list of
 10 materials reviewed?

11 A. Yes, sir.

12 Q. Was it based on anything else?

13 A. Oh, based on my experience, training, and
 14 education, but as far as documents, just these.

15 Q. Okay. And so your report does not list, in
 16 your materials reviewed, any national standards or other
 17 policing standards, correct?

18 A. No, sir. I was not --

19 Q. And you don't -- I'm sorry.

20 MR. KIVETZ: Let me finish.

21 THE WITNESS: I was not asked to opine on --
 22 on those.

23 BY MR. SWAMINATHAN:

24 Q. Okay. And you said you were not -- you were
 25 not asked to opine on any national policing standards;

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1 is that fair?

2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: That is correct.

4 BY MR. SWAMINATHAN:

5 Q. Okay. And you didn't consult any national
 6 policing standards in offering your opinions, correct?

7 A. That is correct.

8 Q. And in your report, you don't cite to any
 9 national policing standards, correct?

10 A. That is correct.

11 Q. Okay. And that's because you, in offering
 12 your opinions, were not intending to offer opinions
 13 about national policing standards; is that fair?

14 MR. KIVETZ: Objection. Form. Misstates
 15 his --

16 THE WITNESS: No, not necessarily. I know
 17 police standards, both national and -- and local.
 18 I don't know a lot about the -- the ones in
 19 Chicago, but the national standards, I'm -- I'm
 20 familiar with. I don't have to cite -- I didn't
 21 feel I had to cite them in my report.

22 BY MR. SWAMINATHAN:

23 Q. Okay. And then you didn't review any of them
 24 or -- in preparing your report; is that fair?

25 A. I -- I may have. I -- I don't remember right

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1 now. If I had any questions, I may have gone to the
 2 IACP website or something, but again, I can't tell you
 3 100 percent.

4 Q. You didn't list any IACP materials in your
 5 list of materials reviewed, correct?

6 A. That is correct.

7 Q. And you don't have any memory of consulting
 8 the IACP in preparing your Sierra Expert Report; is that
 9 fair?

10 A. I don't have any memory. It doesn't mean that
 11 I did not. I just don't remember at this time.

12 Q. Looking at your list of materials reviewed,
 13 did you receive any materials related to Mr. Sierra
 14 receiving a Certificate of Innocence?

15 A. I believe that's included in there somewhere,
 16 maybe one of the -- the court hearings or something, but
 17 in any event, I -- I know that he did receive that.

18 Q. Did it have any impact on your opinion?

19 A. No, sir.

20 Q. The conclusions of Judge Reddick, you saw
 21 those in your materials, correct?

22 MR. KIVETZ: Objection. Form. Foundation.

23 THE WITNESS: Yes, sir.

24 BY MR. SWAMINATHAN:

25 Q. And so you were aware of her findings based on

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1 the Certificate of Innocence hearing that she conducted,
 2 correct?

3 MR. KIVETZ: Objection. Form.

4 THE WITNESS: Yes, sir. I remember reading
 5 that.

6 BY MR. SWAMINATHAN:

7 Q. Did that have any impact on your opinions?

8 A. No, sir.

9 Q. Did you -- would you agree that Ms. -- that
 10 Judge Reddick found that, in fact, there had been
 11 misconduct that occurred in -- in our homicide
 12 investigation?

13 MR. KIVETZ: Objection to form. Foundation.

14 THE WITNESS: Ask that question again, please?

15 BY MR. SWAMINATHAN:

16 Q. In -- you agree that in reviewing Judge
 17 Reddick's conclusions after the Certificate of Innocence
 18 hearing, that she did conclude that there had been
 19 police misconduct in the investigation?

20 MR. KIVETZ: Objection. Form. Foundation.

21 THE WITNESS: She did write that in her -- in
 22 her findings, or her report, or whatever.

23 BY MR. SWAMINATHAN:

24 Q. Do you disagree with Judge Reddick's findings?

25 MR. KIVETZ: Objection. Form.

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1 THE WITNESS: Yeah. I -- I'm not here to
 2 agree or disagree. I just offered opinion on the
 3 investigation. The judge is -- is welcome to his
 4 or her opinion. I don't know if she's a man or a
 5 woman.

6 BY MR. SWAMINATHAN:

7 Q. And actually in this case, you're not offering
 8 an opinion about whether or not misconduct occurred; is
 9 that fair?

10 A. Whether the misconduct occurred? No, I'm not
 11 offering an opinion on that.

12 Q. Okay. All you're doing is saying that if you
 13 accept the version of events that is told in the police
 14 reports and the handwritten statement, that would be
 15 consistent with accepted police practices; is that fair?

16 A. Basically, yes, sir.

17 Q. Okay. Go down to the deposition section, if
 18 you don't mind, sir.

19 A. Where -- where do you want me to go, sir?

20 Q. In your expert report on Page 4 in your list
 21 of materials reviewed.

22 A. Okay.

23 Q. There's a depositions section. Do you see
 24 that? And you list a bunch of depositions?

25 A. Yes, sir.

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1 Q. Okay. Thank you. The fourth item on there is
 2 the Ron Malczyk deposition, including exhibits. Do you
 3 see that?

4 A. Yes, sir.

5 Q. You reviewed Mr. Malczyk's deposition, yes?

6 A. I did.

7 Q. Okay. Did you review it in its entirety?

8 A. Yes, sir.

9 Q. Did you find it notable, memorable?

10 A. Sir, I -- I don't remember the details of --
 11 of his deposition. I would have to go back and -- and
 12 read it again. Like -- like, there's many -- many on
 13 that list. I don't want to confuse one name with
 14 another.

15 Q. Is it fair to say that you -- in your report,
 16 you don't discuss the deposition testimony of
 17 Mr. Malczyk at all, correct?

18 A. I don't believe so, no, sir.

19 Q. Okay. And you -- and you know that
 20 Mr. Malczyk was the police officer who was at the scene
 21 of the Ruben Gonzalez murder, correct?

22 MR. KIVETZ: Objection. Form. Foundation.

23 THE WITNESS: I -- I -- I can't remember those
 24 details, but if you are -- if you're telling me so,
 25 then I have no reason to doubt you.

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1 MR. KIVETZ: Well, and also, Anand, you know,
 2 we're not offering any opinions on the Ruben
 3 Gonzalez matter. It's right on Page 2 [sic] of his
 4 report.

5 BY MR. SWAMINATHAN:

6 Q. Yeah. And Mr. Andreu, so let's just be --
 7 let's make sure we got it clear on the record from you.
 8 You're not offering any opinions about the Ruben
 9 Gonzalez homicide investigation, correct?

10 A. No, sir.

11 Q. And you understand, however, that there was
 12 information that was purportedly learned during the
 13 Ruben Gonzalez deposition that was relevant in the
 14 Andujar homicide investigation, correct?

15 A. Yes. And I -- I -- I can remember the
 16 visiting of the detectives to Gonzalez' mother, which
 17 led to some vital information on the Andujar case.

18 Q. Okay. And so ultimately, there was
 19 information that was purportedly learned in the Gonzalez
 20 investigation that led to Mr. Sierra becoming a suspect
 21 in the Andujar case, correct?

22 A. Yes, sir.

23 Q. And that information had to do, in part, with
 24 information about a description of a particular vehicle,
 25 correct?

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1 A. Yes, sir.

2 Q. Okay. And did you look at the information in
 3 the Gonzalez file about the vehicle that had been
 4 described as being involved?

5 A. I don't --

6 MR. KIVETZ: Objection to form and foundation.

7 THE WITNESS: I don't know what information I
 8 received on the Gonzalez files and -- and -- file
 9 and what it -- what it said or didn't say. I just
 10 don't remember at this point.

11 BY MR. SWAMINATHAN:

12 Q. You -- in your list of materials reviewed, you
 13 agree with me, you list the Ruben Gonzalez homicide
 14 investigative file and permanent retention file,
 15 correct?

16 A. Yeah. Yes, you're right. I did review. What
 17 I'm saying is I -- I can't remember now, specifically,
 18 the details of it.

19 Q. Okay. And if you look at Page 5 of your
 20 report --

21 A. Yes, sir.

22 Q. -- you discuss the Ruben Gonzalez murder
 23 investigation, correct?

24 A. Yes.

25 Q. And you provide a general summary of that

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1 murder investigation, correct?

2 A. Yes.

3 Q. Okay. And in that section, you do -- you
 4 agree with me, you do not discuss the testimony of the
 5 police officer in that case, Mr. Malczyk, correct?

6 A. Correct.

7 Q. Okay. Why didn't you discuss the testimony of
 8 Mr. Malczyk?

9 A. All I was doing was laying, like, a foundation
 10 of what had happened in the Ruben Gonzalez murder, the --
 11 the location, the time, the date, to show proximity to
 12 the Andujar case, and -- and the -- and a possible
 13 connection, but I -- I didn't provide you with details.

14 Q. Okay. Do you -- and ultimately, because you
 15 were not offering opinions about the Ruben Gonzalez
 16 case, correct?

17 A. Exactly.

18 Q. Okay. Do you have a copy of Mr. Tiderington's
 19 expert report?

20 A. I do.

21 Q. Can you get that in front of you? Let me know
 22 when you have that.

23 A. Okay. I have it.

24 MR. KIVETZ: Oh, hold on. I need a second.
 25 Okay.

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1 BY MR. SWAMINATHAN:

2 Q. Okay. If you look at that report and go to
 3 Page 30 of that report -- Mr. Tiderington's report?

4 A. Okay.

5 Q. Okay. And on that -- in that -- in Mr.
 6 Tiderington's report, he offers some opinions on Pages
 7 30 through 33 about what occurred during the Ruben
 8 Gonzalez homicide investigation, correct?

9 A. Yes.

10 Q. Okay. And you're not offering any opinions in
 11 response to Mr. Tiderington's discussion of the Ruben
 12 Gonzalez investigation; is that fair?

13 MR. KIVETZ: Objection. Form.

14 THE WITNESS: That's fair. I was not
 15 requested to opine on that, and I did not.

16 BY MR. SWAMINATHAN:

17 Q. Okay. And so the opinions Mr. Tiderington
 18 offers on Pages 30 through 33 of his report, you're not
 19 responding or disagreeing with those; is that fair?

20 MR. KIVETZ: Objection.

21 THE WITNESS: Neither -- neither agreeing or
 22 disagreeing, no.

23 BY MR. SWAMINATHAN:

24 Q. Okay. Thank you. And if you look on Page 31
 25 of his report -- this is probably the easiest way to do

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1 it since we can't show on the screen. Let's use his
 2 report. If you look on Page 31 of his report --
 3 A. Yes, sir.
 4 Q. You -- when you offered your report in this
 5 case, you obviously reviewed Mr. Tiderington's report,
 6 correct?

7 A. Yes.

8 Q. And in fact, you were -- the purpose of this -
 9 - respond to some of the opinions of Mr. Tiderington,
 10 correct?

11 A. Right.

12 Q. Okay. And just, by the way, to be clear,
 13 Mr. Tiderington has a number of opinions about Chicago
 14 Police Department policies and practices. You're not
 15 offering any opinions about that, correct?

16 A. Yes, sir, correct.

17 MR. KIVETZ: Wait a minute. I just -- what
 18 page are you on?

19 MR. SWAMINATHAN: I -- I'm just ask -- I'm
 20 asking him just general question, not about the
 21 report.

22 MR. KIVETZ: Okay.

23 BY MR. SWAMINATHAN:

24 Q. And Mr. Tiderington, when you reviewed his
 25 report, had a number of opinions, for example, about the

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1 Special Order 83-1 and the subsequent Special Orders
 2 related to investigative files and street files. You saw
 3 that in his report, correct?

4 A. Yes.

5 Q. And you're not offering any opinions about
 6 those Special Orders, correct?

7 A. That's correct.

8 Q. And Mr. Tiderington had some opinions about
 9 information that should have been documented and
 10 disclosed in the Andujar homicide investigation. You're
 11 not offering any opinions about what was disclosed or
 12 not disclosed, correct?

13 THE WITNESS: Well --

14 MR. KIVETZ: Objection. Form.

15 THE WITNESS: Ask that question again. I'm
 16 sorry, sir.

17 BY MR. SWAMINATHAN:

18 Q. Yeah. You're not offering any opinions about
 19 what information was disclosed or not disclosed to
 20 prosecutors in the criminal defense in the Andujar
 21 homicide investigation, correct?

22 MR. KIVETZ: Objection to form.

23 THE WITNESS: Correct -- that is correct.

24 BY MR. SWAMINATHAN:

25 Q. Okay. And as a matter of your practices when

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1 you were in homicide, when you were -- strike that.
 2 As a matter of your practices when you were an
 3 investigator, you turned over all of the police reports
 4 in your file to the prosecutor; is that fair?

5 A. Yes.

6 Q. Okay. And you would never pick and choose
 7 which police reports or police documents to share; is
 8 that correct?

9 A. That is correct.

10 Q. Okay. And I think, as you've now indicated,
 11 your opinions here are focused on responding to
 12 Mr. Tiderington, specifically with regard to the
 13 investigation that was conducted in the Andujar case,
 14 correct?

15 A. Yes, sir.

16 Q. And are there any opinions that
 17 Mr. Tiderington had with regard to how the Andujar
 18 investigation was conducted that you agree with?

19 MR. KIVETZ: Objection to form.

20 THE WITNESS: Again, I'd have to go through
 21 the whole report, but I -- I can't name anything
 22 right now. I -- I can say that what he talks about
 23 -- the misconduct, if that misconduct, in fact,
 24 took place, that would not be a correct way to
 25 conduct an investigation.

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1 BY MR. SWAMINATHAN:

2 Q. Okay.

3 A. But again, I'm not giving any opinion on that.
 4 Q. Okay. And so if I understand you correctly,
 5 one of the things Mr. Tiderington does in his report is
 6 he discusses some of the evidence that was contained in
 7 the record that makes accusations of misconduct by
 8 police officers, correct?

9 A. Yes. I've read that. Correct.

10 Q. And one of the things he does is he opines
 11 that if that misconduct that was described by various
 12 witnesses, in fact, occurred, that would be a violation
 13 of generally accepted police practices, correct?

14 MR. KIVETZ: Objection to form. Assuming a
 15 jury credits it, but yes.

16 BY MR. SWAMINATHAN:

17 Q. Go ahead.

18 A. Yes, sir.

19 Q. Okay. And you agree with him that those
 20 things that are described would be deviations from
 21 generally accepted police practices if they, in fact,
 22 occurred, correct?

23 MR. KIVETZ: Objection. Form. Again,
 24 assuming a jury credits it. Go ahead.

25 THE WITNESS: Yes, sir.

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1 BY MR. SWAMINATHAN:

2 Q. Okay. And if you look, for example, at Page
3 23 of his report -- tell me when you're there, sir.

4 A. Okay, 23. I'm here.

5 Q. Yep. Okay. And in around the middle of the
6 page, he has a sections -- he has a section -- well, he
7 has -- there's two bullet points on that page -- on
8 Page 23. Do you see that?

9 A. Yes.

10 Q. And in those bullet points, he discusses IACP
11 policy documents and American Judicature Society
12 information. Do you see that?

13 A. Yes, sir.

14 Q. And his discussion there, he's basically
15 talking about various national policing standards that
16 indicate that even by 1995, there was an understanding
17 within the world of policing about some of the
18 challenges related to eyewitness identifications. Do
19 you agree?

20 MR. KIVETZ: Objection. Form.

21 THE WITNESS: That's what he wrote in his
22 report, yes.

23 BY MR. SWAMINATHAN:

24 Q. Do you -- and you didn't say anything in your
25 report disputing or challenging that; is that fair?

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1 MR. KIVETZ: Objection. Form.

2 THE WITNESS: I don't believe I did. No, sir.

3 BY MR. SWAMINATHAN:

4 Q. Okay. And so you're not disagreeing with
5 Mr. Tiderington about the idea that even by 1995, the
6 challenges associated with eyewitness identifications
7 were known in the world of policing; is that fair?

8 MR. KIVETZ: Objection. Form.

9 THE WITNESS: I'm agreeing or -- what he wrote
10 in his report, yes.

11 BY MR. SWAMINATHAN:

12 Q. Okay. And so his citation to the IACP
13 policies and some Supreme Court standards in his report,
14 you're not disagreeing with those opinions; is that
15 fair?

16 MR. KIVETZ: Objection to form.

17 THE WITNESS: No, sir. I mean, I didn't go to
18 his -- to his footnotes and open up the IACP
19 information. I -- I'm -- I'm hopeful that what he
20 wrote there is -- is what's listed in IACP, but I
21 didn't check it out. No.

22 BY MR. SWAMINATHAN:

23 Q. Okay. But he writes on there -- I mean, you
24 saw in his report where he quoted from it. "Police
25 frequently rely on eyewitness identifications.

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1 Unfortunately, civilian eyewitnesses frequently prove to
2 be unreliable observers and erroneous identifications
3 are often the result. Misidentification by our" --
4 "eyewitnesses are normally the result of a combination
5 of factors." That's a citation that he provided
6 directly from the IACP policy center documents, correct?

7 MR. KIVETZ: Objection to form.

8 THE WITNESS: Yes. I see it's in quotation,
9 so I'm assuming that that is directly from there.

10 BY MR. SWAMINATHAN:

11 Q. Okay. And you don't disagree with that
12 statement from the policy documents of the IACP,
13 correct?14 MR. KIVETZ: Objection. Form. Misstates his
15 previous testimony.16 THE WITNESS: I agree with police frequently
17 rely on eyewitness information. Frequently proved
18 to be unreliable observers, I'm not too sure about.

19 BY MR. SWAMINATHAN:

20 Q. Okay. When you read this portion of
21 Mr. Tiderington's report, you did not decide that you
22 felt that you needed to offer a counter-opinion on his
23 discussion of the IACP's policy documents, correct?

24 MR. KIVETZ: Objection. Form.

25 THE WITNESS: No, sir.

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1 BY MR. SWAMINATHAN:

2 Q. Okay. Why not?

3 A. I can't tell you what was going on in my mind
4 at the time. I just didn't.5 Q. But you didn't find anything that
6 Mr. Tiderington had written about what was contained in
7 the IACP policy documents from 1992 and 1993 to be false
8 or inaccurate; is that fair?

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: Again, I didn't --

11 MS. BARBER: Misstates testimony.

12 THE WITNESS: I didn't go back and -- and --
13 and check the footnotes that he wrote in his
14 report, but I -- I believe that what he put in
15 there is accurate. I mean, it'd have to be, it was
16 what's in his report.

17 BY MR. SWAMINATHAN:

18 Q. Okay. And so you don't dispute that in 1992
19 and 1993, the IACP had papers stating that civilian
20 eyewitness frequently proved to be unreliable observers;
21 is that fair?

22 MR. KIVETZ: Objection. Form.

23 THE WITNESS: What he wrote there is -- is
24 from the IACP. My -- my experience in -- in
25 homicide, I don't remember ever having a case,

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1 ever, where a witness identified a suspect and --
 2 and the person was convicted and later on it was
 3 proven that the eyewitness identification was not -
 4 - not true, that he -- he made -- he or she made a
 5 mistake. That never happened in any of my cases.

6 BY MR. SWAMINATHAN:

7 Q. Have you ever had a case that you investigated
 8 and resulted in a conviction in which the conviction was
 9 later thrown out?

10 A. No, sir.

11 Q. Have you -- do you know any officer who worked
 12 with you ever in Miami who had even five instances of
 13 cases that they worked on, having the convictions thrown
 14 out?

15 A. I can't answer that.

16 MR. KIVETZ: Objection to form.

17 THE WITNESS: I can't answer that. I don't
 18 know everybody that worked in homicide that -- you
 19 know, what happened in their cases.

20 BY MR. SWAMINATHAN:

21 Q. Oh, thank you. I'm not asking you about
 22 things you don't know. I'm asking you only about what
 23 you do know. So let me ask it again. Are you aware of
 24 a single investigator from Miami who had multiple
 25 instances in which an investigation they conducted

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1 resulted in convictions being thrown out?

2 MR. KIVETZ: Objection. Form. You're saying
 3 now, outside of a lineup, because I think that's
 4 where I'm confused.

5 MR. SWAMINATHAN: I'm asking -- yeah. I'm
 6 asking about anything.

7 MR. KIVETZ: Okay.

8 THE WITNESS: No, I -- I can't recall any
 9 case.

10 BY MR. SWAMINATHAN:

11 Q. Can you recall a single detective or
 12 investigator that you worked with whose cases resulted
 13 in multiple convictions being thrown out?

14 MR. KIVETZ: Objection. Form. Foundation.

15 THE WITNESS: No, sir, I cannot.

16 BY MR. SWAMINATHAN:

17 Q. Okay. If you go to Page 30 of
 18 Mr. Tiderington's report?

19 A. 30?

20 Q. 30, yeah, Page 30. Thank you.

21 A. Okay.

22 Q. He has a discussion there, obviously, with the
 23 Ruben Gonzalez investigation. We talked about that. If
 24 you look at Page 31 of his report.

25 A. Okay.

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1 Q. He has a section where he has cut and paste
 2 [sic] in a portion of the police report from the
 3 Gonzalez case. Do you see that?

4 A. Yes, sir.

5 Q. Okay. And what he's citing there is to
 6 Detective Woitowich and Graf's interview of Malczyk at
 7 the scene. Do you see that?

8 A. Yes, sir.

9 Q. And that was among the documents that you
 10 reviewed, correct?

11 A. Correct.

12 Q. Okay.

13 MS. BARBER: Sorry.

14 BY MR. SWAMINATHAN:

15 Q. And then what --

16 MS. BARBER: Sorry. What page?

17 MR. KIVETZ: 31.

18 MR. SWAMINATHAN: This is Page 31 of the
 19 Tiderington report.

20 MS. BARBER: Thank you.

21 MR. SWAMINATHAN: Yeah.

22 BY MR. SWAMINATHAN:

23 Q. Okay. And on Page 32 of the report, he then
 24 cites to a separate police report that discusses an
 25 interview of Mr. Malczyk. Do you see that?

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1 A. Okay.

2 Q. Right? And so what he basically discusses on
 3 Page 31 and 32 are two different reports in the Gonzalez
 4 investigation, one written by Woitowich and Graf about
 5 their conversation with Mr. Malczyk, and then a later
 6 one written by Detective Guevara and Halvorsen about
 7 their conversation with Mr. Malczyk. Do you see that?

8 MR. KIVETZ: Objection. Form. Take your time
 9 if you need to read, review it.

10 BY MR. SWAMINATHAN:

11 Q. Yeah. Take as much time as you need.

12 A. Okay.

13 Q. Okay. And when you reviewed Mr. Tiderington's
 14 report, you understood that one of the things he was
 15 pointing out was that there's a significant
 16 contradiction between the Woitowich and Graf report and
 17 the Guevara-Halvorsen report, correct?

18 MR. KIVETZ: Objection to form.

19 THE WITNESS: There is difference.

20 BY MR. SWAMINATHAN:

21 Q. Okay. And the key difference is that in one
 22 report, Mr. Malczyk had told Woitowich and Graf that the
 23 Imperial Gangsters in the silver car drove away without
 24 providing any information. And in the Guevara-
 25 Halvorsen report, Mr. Malczyk purportedly told them that

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1 he did get information from the two Imperial Gangsters;
 2 is that fair?

3 A. Yes, sir.

4 MR. KIVETZ: Objection. Form.

5 BY MR. SWAMINATHAN:

6 Q. Do you have any explanation for that
 7 contradiction?

8 MR. KIVETZ: Objection. Form. Foundation.

9 Speculative.

10 THE WITNESS: No, sir. I do not.

11 BY MR. SWAMINATHAN:

12 Q. Are you aware of any evidence about which of
 13 those two versions is correct?

14 MR. KIVETZ: Objection. Form. Foundation.

15 Speculative.

16 THE WITNESS: No, sir. I do not.

17 BY MR. SWAMINATHAN:

18 Q. And do you have -- strike that. Mr. Malczyk,
 19 you said you had a copy of his deposition, correct?

20 A. Yes.

21 Q. And in fact, Mr. Tiderington also cited
 22 specifically to the deposition of Ron Malczyk in
 23 Footnote 19, you see that?

24 A. Yes

25 Q. And --

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1 MR. KIVETZ: Objection. Form. Foundation.

2 BY MR. SWAMINATHAN:

3 Q. -- when you review -- I'm sorry. Go ahead,
 4 Jeff.

5 MR. KIVETZ: Yeah. I mean, it seems like what
 6 you're trying to do is get him to provide opinions
 7 that he hasn't provided and that's outside the four
 8 corners of his report. If that's what you're
 9 trying to do, I'd say that that's improper and also
 10 inconsistent with his report. So that's what I'm
 11 trying to figure out, if you're trying to get him
 12 to provide opinions that he's not providing?

13 MR. SWAMINATHAN: Nothing to solve, I'll just
 14 ask the questions. And I'm not trying to do that,
 15 obviously.

16 BY MR. SWAMINATHAN:

17 Q. I would -- Mr. Andreu, I want to be very
 18 clear. You're not intending to offer any opinions in
 19 this deposition today that are different or additional
 20 to what you offered in your report; is that fair?

21 MR. KIVETZ: Objection. Beyond what he's
 22 testified to today, sure.

23 THE WITNESS: Yes. My report speaks for
 24 itself.

25 BY MR. SWAMINATHAN:

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1 Q. Okay. And are you intending in this
 2 deposition to offer new or different opinions?

3 A. No, sir.

4 Q. Okay. And if you look at that second to last
 5 bullet point in Mr. Tiderington's report, I mean, you
 6 reviewed this entire section of Mr. Tiderington's report
 7 when you offered your opinions, correct?

8 A. Yes.

9 Q. Okay. And on that second-to-last bullet
 10 point, Mr. Tiderington discusses the testimony of
 11 Mr. Malczyk, correct?

12 A. Yes.

13 Q. And he cites to the fact that Mr. Malczyk was
 14 very clear that the Guevara and Halvorsen report was
 15 false, correct?

16 A. That's what I believe he said in his
 17 deposition. Yes, sir.

18 Q. Okay. And to what role did that play, if any,
 19 in your opinions in this case?

20 MR. KIVETZ: Objection. Form.

21 THE WITNESS: None --

22 MR. KIVETZ: Foundation. Outside the scope of
 23 his report.

24 THE WITNESS: None, because this dealt with
 25 the Gonzalez murder, not the -- the Mont -- the

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1 Andujar murder.

2 BY MR. SWAMINATHAN:

3 Q. Did you take into consideration, in offering
 4 your opinions in this case, that a police officer swore
 5 under oath that Detective Guevara and Halvorsen's report
 6 was -- had created a false report?

7 MR. KIVETZ: Objection. Form. Foundation.
 8 Speculative. Outside the scope of his report.

9 THE WITNESS: No, sir. Not really.

10 BY MR. SWAMINATHAN:

11 Q. Okay.

12 MR. KIVETZ: Do you guys want to do about some
 13 type of break here for lunch or I don't -- you said
 14 you weren't going to be --

15 MR. SWAMINATHAN: Yeah, I think, I mean, I
 16 think I'm going to be done inside of an hour.

17 MR. KIVETZ: You think you're going to be done
 18 inside of an hour?

19 MR. SWAMINATHAN: Yes. And -- and --

20 MR. KIVETZ: Do you have some place to go at
 21 2:00?

22 MR. SWAMINATHAN: No, but ideally even less
 23 than that. So let's -- so it's up to you, though,
 24 we could take a lunch break, though. It's really
 25 up to you.

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1 THE WITNESS: I -- I don't need a lunch break.
 2 I just need a bathroom break.

3 MR. KIVETZ: Yeah. I only just need, like,
 4 ten minutes, though. Like, I'm personally hungry,
 5 I've seen you sna -- we're off the record, Sydney,
 6 please.

7 THE REPORTER: Okay. We're off the record.
 8 The time is 12:56.

9 (OFF THE RECORD)

10 THE REPORTER: We are back on the record for
 11 the deposition of Nelson Andreu being conducted by
 12 videoconference. My name is Sydney Little. Today
 13 is May 12th, 2023, and the time is 1:16 p.m.
 14 Central.

15 BY MR. SWAMINATHAN:

16 Q. Okay. Mr. Andreu, when witnesses review --
 17 strike that. We talked earlier about your practices
 18 with regard to the conduct of eyewitness identification
 19 procedures and in particular, photo arrays. Do you
 20 recall that?

21 A. Yes, sir.

22 Q. Okay. When you would conduct photo arrays
 23 with witnesses, would you document how long it took for
 24 the witness to be able to make an identification?

25 MR. KIVETZ: Objection. Form. Foundation.

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1 I'm not sure what time period we're talking about
 2 here.

3 THE WITNESS: Document, like, to say it took
 4 him two seconds or 20 seconds? No, I don't
 5 remember ever documenting that in a report.

6 BY MR. SWAMINATHAN:

7 Q. Would it be fair to -- strike that. The
 8 amount of time it takes a witness to make an
 9 identification, is that something that would be relevant
 10 to you, ever, as a investigator?

11 MR. KIVETZ: Objection. Form. Speculative.

12 THE WITNESS: I don't understand why -- what
 13 your question is, would it be relevant?

14 BY MR. SWAMINATHAN:

15 Q. Yeah. Like, if it took the witness a minute
 16 of looking at the photographs, you know, would that
 17 matter to you, versus whether the witness saw it and
 18 said immediately, aha, that's the person?

19 MR. KIVETZ: Objection. Form. Incomplete
 20 hypothetical.

21 THE WITNESS: It depends on the circumstances.
 22 For example, this is the victim and somebody close
 23 to the witness, and he or she looks at this
 24 photographs [sic] and -- and maybe crying or
 25 unable, you know, something like that, it may take

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1 a little longer. But normally it takes, usually,
 2 no longer than 30 seconds.

3 BY MR. SWAMINATHAN:

4 Q. In your experience, having conducted a lot of
 5 photo arrays, typically, usually you can -- the witness
 6 is going to be able to make an identification with 30 --
 7 within 30 seconds if they're going to be able to make an
 8 identification. Am I understanding you correctly?

9 A. Most of the time.

10 MR. KIVETZ: Objection. Form.

11 THE WITNESS: Yes. Most of the time.

12 BY MR. SWAMINATHAN:

13 Q. Okay. And if it was going to -- if it took
 14 the witness five minutes, you know, before they could
 15 make a pick, is that something you would sort of note as
 16 you're considering the reliability of the witness's
 17 identification?

18 MR. KIVETZ: Objection. Form. Incomplete
 19 hypothetical.

20 THE WITNESS: Again, and -- and I know what
 21 you're saying, that he's -- that he said it in
 22 testimony, that it took him five to ten minutes.
 23 People, in my opinion, have a -- a -- a hard
 24 time judging time. And again, he may be saying
 25 from the time the detectives got there to the time

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1 he left was five or ten minutes. I don't think in
 2 his testimony, he says it took me five to ten
 3 minutes to pick out the photograph. So I don't --
 4 you know, to me, it was a positive identification
 5 that was probably done -- in reading some of the
 6 other detectives' testimony, it did not take five
 7 to ten minutes.

8 BY MR. SWAMINATHAN:

9 Q. Okay. If you agree that if it had really
 10 taken the witness five to ten minutes to be able to pick
 11 a photo, that would cause you to have some concerns
 12 about whether that was a good identification; is that
 13 fair?

14 MR. KIVETZ: Objection to form.

15 THE WITNESS: If the individual is looking at
 16 the lineup for five to ten minutes before he or she
 17 makes an identification, yes. I mean, I would -- I
 18 would -- I wouldn't -- I would say, listen, you --
 19 you want to ask a question? Sometimes witnesses
 20 will ask questions during the lineup about hair or
 21 a mustache or something like that. So why -- why
 22 is this taking place? I --

23 BY MR. SWAMINATHAN:

24 Q. If it was -- in other words, if I'm
 25 understanding you correctly, if it was taking as much as

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1 -- if the witness is staring at the pictures for five
 2 minutes, at some point you're probably going to end that
 3 procedure; is that fair?

4 MR. KIVETZ: Objection. Form. Foundation.
 5 Speculative. Incomplete hypothetical.

6 THE WITNESS: I -- I wouldn't say end it. I
 7 would say I would ask, "What's -- what's going on?
 8 What's the problem? Do you recognize anybody or
 9 don't you?" Something to -- something like that.

10 BY MR. SWAMINATHAN:

11 Q. Okay. And in this case, you indicated that
 12 you saw the testimony of Mr. Rodriguez, that it took him
 13 five to ten minutes, you saw that, correct?

14 A. Yes.

15 MR. KIVETZ: Objection. Form.

16 BY MR. SWAMINATHAN:

17 Q. And for purposes of your report, you assume
 18 that it didn't really actually take him five to ten
 19 minutes of actually viewing the photos; is that fair?

20 MR. KIVETZ: Objection.

21 THE WITNESS: I don't believe it took that
 22 long, correct.

23 BY MR. SWAMINATHAN:

24 Q. Okay. And so you, for purposes of your
 25 report, interpreted that testimony to mean that he was

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1 talking about, you know, maybe how long the police
 2 officers were there or something else, but not the
 3 amount of time he was looking at the photos, correct?

4 MR. KIVETZ: Objection. Form.

5 THE WITNESS: That, and, again, the people's
 6 perception of time is -- is difficult to judge.

7 BY MR. SWAMINATHAN:

8 Q. Okay. Because if, in fact, he'd been looking
 9 at the photos for five to ten minutes before he could
 10 make a pick, that would cause you to have concerns about
 11 the reliability of his pick; is that fair?

12 MR. KIVETZ: Objection. Form. Foundation.

13 THE WITNESS: If the photograph were placed in
 14 front of him and it took him up to ten minutes to
 15 say something, without any interjection from any of
 16 the detectives, yes, that would be of some sort of
 17 concern.

18 BY MR. SWAMINATHAN:

19 Q. Okay. If you look at -- let's see. Go back
 20 to your report, sir, please.

21 A. My report? Yes.

22 Q. Yeah. Thank you. If you go to Page 8 of your
 23 report.

24 A. Okay. Page 8.

25 Q. If you go to Paragraph 27.

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1 A. Okay.

2 Q. And on Paragraph 27, it talks about Melendez
 3 and Rodriguez making identifications of a Buick Park
 4 Avenue in the police parking lot, correct?

5 A. Yes.

6 Q. Okay. That information in Paragraph 27, that
 7 is not what Mr. Rodriguez and Mr. Melendez testified to,
 8 correct?

9 MR. KIVETZ: Hold on a second. You're on
 10 Paragraph 27?

11 MR. SWAMINATHAN: Yeah.

12 MR. KIVETZ: Yeah. Objection to form.

13 THE WITNESS: Okay. They -- they -- this is
 14 what is in the police reports. They may have
 15 testified differently at -- at trial. I think
 16 there was an issue with the tinted windows in their
 17 trial testimony.

18 BY MR. SWAMINATHAN:

19 Q. Okay. So in Paragraph 27, why didn't you
 20 include the information from the criminal trial
 21 testimony and their deposition testimony?

22 MR. KIVETZ: Objection. Form.

23 THE WITNESS: Because I was -- if you go back
 24 to the previous page, this is -- these are not
 25 opinions. These are from the homicide

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1 investigation.

2 BY MR. SWAMINATHAN:

3 Q. Okay. So Paragraphs 17 through 29 are written
 4 based on the information contained in the police
 5 investigation file, correct?

6 A. Yes, sir.

7 Q. Okay. And then Paragraph 30 -- well, we can
 8 skip that. Paragraph 37 on, is where you have your
 9 opinions, correct?

10 A. Paragraph 37 is where they begin. Yes.

11 Q. Okay. And in your opinion section, you don't
 12 discuss anywhere that Mr. Melendez and Mr. Rodriguez
 13 testified that they did not identify the Buick Park
 14 Avenue as being the vehicle, correct?

15 MR. KIVETZ: Objection. Form. Misstates the
 16 evidence. And --

17 THE WITNESS: I'm looking through the report,
 18 give me a minute.

19 BY MR. SWAMINATHAN:

20 Q. Uh-huh.

21 A. In number 48, there is similarity. The
 22 description of the -- the vehicle by the eyewitnesses as
 23 having had spoke wheels, is consistent with the vehicle
 24 they identified in the area parking lot.

25 Q. Okay. So in Paragraph 48, you discuss this

<p>1 issue of their -- the car identification, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And the information in Paragraph 48 in your</p> <p>4 opinions is based on the information contained in the</p> <p>5 police reports, correct?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: 48? Yes.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. In Paragraph 48, you do not discuss the</p> <p>10 testimony at the criminal trial and the deposition</p> <p>11 testimony of Mr. Melendez or Mr. Rodriguez, correct?</p> <p>12 A. Correct. I do not.</p> <p>13 Q. Okay. And there's nowhere in your report</p> <p>14 where you discuss the deposition testimony or criminal</p> <p>15 trial testimony of Mr. Melendez and Mr. Rodriguez</p> <p>16 regarding the car identification; is that fair?</p> <p>17 MR. KIVETZ: Objection. Form. You know,</p> <p>18 beyond the materials reviewed.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Go ahead.</p> <p>21 A. I believe so.</p> <p>22 Q. Okay. Okay. In your opinion, you don't offer</p> <p>23 any opinions about whether or not Mr. Melendez and</p> <p>24 Mr. Rodriguez actually made an identification of the car</p> <p>25 in the police parking lot; is that true?</p>	<p>1 and correct it later. I mean, it's clearly in his</p> <p>2 report.</p> <p>3 MR. SWAMINATHAN: Do you want to tell me where</p> <p>4 in his report he discusses the testimony of</p> <p>5 Melendez and Rodriguez about the car ID?</p> <p>6 MR. KIVETZ: It's in 48 and he reviewed it,</p> <p>7 and he's told you multiple times that he reviewed</p> <p>8 everything in consideration of making his --</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. So Paragraph 48, we just talked about</p> <p>11 it, though. Mr. Andreu, you and I agree that first, we</p> <p>12 talked about Paragraph 27, and in Paragraph 27, you</p> <p>13 agree that that is based on the police reports, not the</p> <p>14 testimony of Mr. Melendez and Mr. Rodriguez, fair?</p> <p>15 A. Fair.</p> <p>16 Q. Okay. And Paragraph 48 is, again, based on</p> <p>17 the police reports, not the testimony of Mr. Melendez</p> <p>18 and Mr. Rodriguez, fair?</p> <p>19 MR. KIVETZ: Objection. Form.</p> <p>20 THE WITNESS: Again, the -- the opinions are</p> <p>21 formed on the totality of the case. Is there</p> <p>22 mention of the testimony by the witnesses in</p> <p>23 reference to the -- the Park Avenue? No.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. Okay. You agree that in the testimony of</p>
<p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: I think we just went over that.</p> <p>3 Now, Page -- Page 8, number 27, it says they --</p> <p>4 they identified the vehicle.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Maybe I'm misunderstanding. I understood you</p> <p>7 in Paragraph 27 to just be reciting what's in the police</p> <p>8 report, that that's not your opinion.</p> <p>9 A. Oh, I see what you're saying.</p> <p>10 Q. Is that correct?</p> <p>11 A. Yes.</p> <p>12 MR. KIVETZ: Objection. Form. You're asking</p> <p>13 him to go through his entire report and ask him if</p> <p>14 he can track down a single line about whether or</p> <p>15 not the individuals identified the report [sic]. I</p> <p>16 mean, I don't think that that's very fair.</p> <p>17 MR. SWAMINATHAN: I don't think it's hard. I</p> <p>18 mean, Mr. Andreu, you -- I think we've already --</p> <p>19 MR. KIVETZ: It's in his report. I mean, it's</p> <p>20 right there. Why don't you direct him to the</p> <p>21 paragraph instead of wasting everyone's time and --</p> <p>22 MR. SWAMINATHAN: It's not -- it's --</p> <p>23 MR. KIVETZ: -- not play this trickster game</p> <p>24 where you get him to say that it's not because he</p> <p>25 can't quickly find it, and then we have to go back</p>	<p>1 Page 151</p> <p>1 MR. Melendez and Mr. Rodriguez, they deny that they made</p> <p>2 a positive identification of the cars being the vehicle</p> <p>3 that was used with the suspects, correct?</p> <p>4 MR. KIVETZ: Objection. Form. Misstates the</p> <p>5 evidence.</p> <p>6 THE WITNESS: I don't know if -- if they</p> <p>7 actually say, "No, that was not the car." They may</p> <p>8 say it was similar. It had the spoke wheels. I</p> <p>9 think their -- one of the things was they were</p> <p>10 concerned about the tinted windows, things like</p> <p>11 that, but I don't think they outright say, "That</p> <p>12 was not the car."</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. Did the -- any of the -- did Mr. Melendez say</p> <p>15 that anywhere in his testimony?</p> <p>16 A. I don't --</p> <p>17 MR. KIVETZ: Objection. Form. Foundation.</p> <p>18 THE WITNESS: I don't remember exactly what he</p> <p>19 said in his deposition testimony or trial</p> <p>20 testimony, what either of the witnesses may or may</p> <p>21 not have said. I just recall that they -- their</p> <p>22 concern was primarily the aspect of the tint on the</p> <p>23 windows.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. In the police reports, did the police reports</p>

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1 document that the individuals said that it was a
 2 positive identification of the vehicle, or did they
 3 document that they said it looks similar or it could be
 4 the vehicle? Did they make that distinction in the
 5 police report?

6 MR. KIVETZ: Objection. Form. Foundation.
 7 This isn't a memory test.

8 THE WITNESS: I -- I believe that the -- in
 9 the police report, it says that they identified the
 10 vehicle.

11 BY MR. SWAMINATHAN:

12 Q. Okay. The police reports -- you documented it
 13 in Paragraph 27, as you identified. The police reports
 14 do not state that Mr. Melendez and Mr. Rodriguez said,
 15 "This is a similar looking car or could be the car."
 16 It's not documented in the police reports, correct?

17 MR. KIVETZ: Objection. Form.

18 THE WITNESS: Again, there was a lot reviewed
 19 concerning the car, but I do not believe that that
 20 is in the police report.

21 BY MR. SWAMINATHAN:

22 Q. Okay. And if, in fact, Mr. Melendez and
 23 Mr. Rodriguez did not make an identification of the
 24 vehicle, that should have been documented, correct?

25 MR. KIVETZ: Objection. Form.

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1 THE WITNESS: In the police report?

2 BY MR. SWAMINATHAN:

3 Q. In the police report, yes.

4 A. If they did not make an identification, yes.

5 Q. Okay. If Mr. Melendez looked at what was
 6 taken to the parking lot and did not identify the Buick
 7 Park Avenue as being the vehicle that was used by the
 8 shooter, that should have been documented, correct?

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: Yes. I would say that should
 11 have been documented.

12 BY MR. SWAMINATHAN:

13 Q. And if, in fact, Mr. Melendez, as he
 14 testified, did not identify that as being the vehicle,
 15 it would be a deviation from accepted police practices
 16 not to have documented that; is that fair?

17 MR. KIVETZ: Objection. Form.

18 THE WITNESS: Again, a deviation, it should
 19 have been in there. Could it have been something
 20 that slipped through the cracks? That, too. I
 21 don't think it was intentionally left out of there,
 22 but again, that -- that's my opinion and -- and the
 23 trier of facts will have to determine who told the
 24 truth.

25 BY MR. SWAMINATHAN:

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1 Q. Okay. And so ultimately you're not offering
 2 an opinion in this case that Mr. Melendez's testimony is
 3 true or not true about what happened; is that fair?

4 A. Yes. I -- I'm not judging people's
 5 testimonies as to -- as to truthfulness

6 Q. For purposes of your opinions, you're assuming
 7 that, in fact, the police reports are true, that
 8 Mr. Melendez made a positive identification of the
 9 vehicle; is that fair?

10 MR. KIVETZ: Objection. Form. Assuming if
 11 the trier of fact credits that testimony.

12 BY MR. SWAMINATHAN:

13 Q. Go ahead, Mr. Andreu.

14 A. That's -- that's it. It's going to -- the --
 15 it's -- I believe that the police reports were accurate.
 16 But again, like I said before, it's not to me to draw a
 17 credibility conclusion.

18 Q. Okay.

19 A. That's going to be the judge or a jury later
 20 on down the road.

21 Q. Okay. And could we look at the section on
 22 Pages --

23 A. My report?

24 Q. Yeah, your report. I'm sorry. If you go to
 25 your opinion section starting on Page 37.

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1 A. I don't have 37 pages.

2 Q. I'm sorry, Paragraph 37 on Page 9. My
 3 apologies.

4 A. Okay.

5 Q. Okay. Paragraphs 37 through 41, the beginning
 6 of your opinion section.

7 A. Okay.

8 Q. I think, as you just indicated, those are
 9 based on the assumption that the police reports are
 10 accurate and truthful, correct?

11 MR. KIVETZ: Objection. Form.

12 THE WITNESS: Again, based on the totality of
 13 the -- of the information that -- that I reviewed,
 14 including the police reports.

15 BY MR. SWAMINATHAN:

16 Q. Okay. But Paragraph 37 through 41 would not
 17 be true if you credit some of the testimony that you
 18 reviewed in the depositions; is that fair?

19 A. I don't know. Let me see.

20 MR. KIVETZ: Objection. Form.

21 THE WITNESS: Let me see. Okay. Ask me the
 22 question again, sir.

23 BY MR. SWAMINATHAN:

24 Q. Yeah. Paragraphs 37 through 41 are based on
 25 the assumption that the information contained in the

<p style="text-align: right;">Page 158</p> <p>1 police reports is true?</p> <p>2 MR. KIVETZ: Objection. Form.</p> <p>3 THE WITNESS: It also includes the</p> <p>4 complexities and the way homicide investigations</p> <p>5 are never perfect. But again, it's the totality of</p> <p>6 everything that I read.</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. Yes. But if you look at Paragraph 38, for</p> <p>9 example, there you opine that the police officers acted</p> <p>10 in accordance with generally accepted police practices,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And if you credited the testimony of Hector</p> <p>14 Montanez or Jose Melendez, for example, you would not</p> <p>15 opine that they -- the detective acted in accordance</p> <p>16 with generally accepted police practices; is that fair?</p> <p>17 MR. KIVETZ: Objection. Form. What</p> <p>18 testimony?</p> <p>19 THE WITNESS: I -- I, again, am -- am not</p> <p>20 drawing a conclusion as to the truthfulness or not</p> <p>21 of -- of Montanez and -- and the witnesses. But --</p> <p>22 and again, I don't say here in this -- in these</p> <p>23 opinions, that the police reports -- that what's</p> <p>24 written in the police reports is the gospel. I</p> <p>25 just say in, again, in the totality of the -- of</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: Not necessarily more accurate.</p> <p>3 Again, I'm not -- I'm not here to -- to give -- put</p> <p>4 weight on who's telling the truth and who's not.</p> <p>5 That's up -- that's not up to me. It's just what I</p> <p>6 read in the entire file, the thousands of pages in</p> <p>7 this file, that I made these opinions. I can't</p> <p>8 specifically say it was A and not B, or C and</p> <p>9 not D.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Is there any place in your report where you</p> <p>12 credit the testimony of Hector Montanez from his</p> <p>13 deposition?</p> <p>14 MR. KIVETZ: Objection. Form. Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: I don't believe I've mentioned</p> <p>17 their depositions at all. No, sir.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Is there any set of opinions that you have in</p> <p>20 your report that are based on crediting Mr. Montanez'</p> <p>21 deposition testimony about what happened?</p> <p>22 MR. KIVETZ: Objection. Form.</p> <p>23 THE WITNESS: No, sir. I don't believe so.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. Because if you credited his testimony, your</p>
<p style="text-align: right;">Page 159</p> <p>1 the information that I reviewed.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay. So in Paragraph 38, we can understand -</p> <p>4 - because you considered the Montanez and the Melendez</p> <p>5 testimony about what occurred during their interviews,</p> <p>6 we can understand that you believe that what they</p> <p>7 described was, in fact, consistent with generally</p> <p>8 accepted police practices?</p> <p>9 A. What they said in their sworn statements to</p> <p>10 the State Attorney, yes.</p> <p>11 Q. And what about their deposition testimony and</p> <p>12 criminal trial testimonies?</p> <p>13 A. Again, they -- they -- stories changed from</p> <p>14 what they gave the -- during their State Attorney's</p> <p>15 statement. And as I've said before, while not giving</p> <p>16 credibility weight to one or the other, my experience</p> <p>17 has shown that the initial -- initial statements more</p> <p>18 close to the time of the incident is probably more</p> <p>19 accurate.</p> <p>20 Q. Okay. And Paragraph 38 is based on that</p> <p>21 assumption, that the information given to the State's</p> <p>22 Attorney and in the police reports is more accurate than</p> <p>23 the subsequent testimony at the criminal trial and</p> <p>24 deposition, fair?</p> <p>25 THE WITNESS: Not necess --</p>	<p style="text-align: right;">Page 161</p> <p>1 opinions would be that there were violations of</p> <p>2 generally accepted police practices, correct?</p> <p>3 MR. KIVETZ: Objection. Form. If a jury</p> <p>4 credits. Go ahead.</p> <p>5 THE WITNESS: That's -- that's not my</p> <p>6 decision.</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. I'll ask the question again. If you credited</p> <p>9 the testimony of Mr. Montanez, it would be a deviation</p> <p>10 from generally accepted police practices; is that fair?</p> <p>11 MR. KIVETZ: Objection. Form.</p> <p>12 THE WITNESS: If -- if I were to believe what</p> <p>13 he says in -- in -- in their statements, then there</p> <p>14 -- there could be issues with police practice.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. And if the jury ultimately credits the</p> <p>17 testimony of Mr. Montanez, Paragraph 38 would not be</p> <p>18 true in your report, correct?</p> <p>19 MR. KIVETZ: Objection. Form.</p> <p>20 THE WITNESS: I don't know that it wouldn't be</p> <p>21 true. My opinion would still be the same. The</p> <p>22 jury will decide, well, I believe what they said in</p> <p>23 their -- in their testimony or depositions or trial</p> <p>24 testimony, but that's the jury's decision to make.</p> <p>25 BY MR. SWAMINATHAN:</p>

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1 Q. Okay. And so your opinion is based on the
 2 assumption that Mr. Montanez' testimony is not true,
 3 correct?

4 MR. KIVETZ: Objection. Form. Asked and
 5 answered, like, 13 times.

6 THE WITNESS: No, sir. Not -- not -- not that
 7 I don't believe what he said. Again, I -- like I
 8 said, my -- my experience and training and
 9 knowledge has led me to assume and believe that the
 10 statements given as close -- closer in proximity to
 11 the incident is probably the most accurate.

12 BY MR. SWAMINATHAN:

13 Q. If you go to Page 11 of your report.

14 A. Yes, sir.

15 Q. In Paragraph 52 you say, "Had there been no
 16 identification and/or conflicting identification(s),
 17 then the detectives should have sought out additional
 18 suspects." Do you see that?

19 A. Yes, sir.

20 Q. What do you mean by that?

21 A. That means if -- if the witnesses had not
 22 identified Sierra, then this -- there's, you know, half
 23 the people in Chicago were suspects, so the
 24 investigation would continue.

25 Q. And so if there had not been an identification

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1 of Sierra, the detectives should have gone back to work
 2 to identify additional suspects?

3 A. Go back and continue the investigation, yes.

4 Q. Okay. And in this case, by the way, there
 5 were not -- Mr. Montanez was not charged, correct?

6 A. That's my understanding, yes.

7 Q. From your perspective, should there have been
 8 additional investigation that was done to try to develop
 9 additional evidence against Mr. Montanez?

10 MR. KIVETZ: Objection. Form.

11 THE WITNESS: That was the decision that was
 12 made by the State Attorney's Office, and it was
 13 beyond the -- the realm of what the detectives
 14 could say. If you could --

15 BY MR. SWAMINATHAN:

16 Q. You're talking about the decision to approve
 17 or not approve charges, was made by the State's
 18 Attorney, is that what you're saying?

19 A. Yes.

20 MR. KIVETZ: Object -- again, it's Hector
 21 Montanez, right? Want to just make sure --

22 MR. SWAMINATHAN: Yes.

23 MR. KIVETZ: -- we're talking about the same
 24 thing.

25 BY MR. SWAMINATHAN:

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1 Q. Yes, it's the -- and -- yes. And so for
 2 Mr. Montanez, what you're indicating is that the
 3 decision not to charge him was made by the ASA, correct?

4 A. Yes, sir.

5 Q. Okay. And the ASA does not decide whether or
 6 not a police officer does additional investigation, do
 7 you agree with that?

8 MR. KIVETZ: Objection. Form.

9 THE WITNESS: No, but --

10 MR. KIVETZ: Speculative. Incomplete
 11 hypothetical.

12 THE WITNESS: The State Attorney has asked me
 13 on -- on several cases to -- to do additional
 14 investigation.

15 BY MR. SWAMINATHAN:

16 Q. And you're not -- you don't need the State's
 17 Attorney's permission as a detective to be able to
 18 continue an investigation, do you?

19 MR. KIVETZ: Objection. Form. Foundation.
 20 Speculative. Incomplete hypothetical.

21 THE WITNESS: Permission, no, no. But if --
 22 if the -- if the State Attorney wants additional
 23 investigation, it -- it should be done. The State
 24 Attorney may always say, "Listen, this -- this --
 25 this individual," again, using Montanez

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1 hypothetically, "he didn't know what was going on,
 2 we're never going to charge him," then that's it.

3 BY MR. SWAMINATHAN:

4 Q. Was there any indication in the -- oh, I'm
 5 sorry. Go ahead.

6 A. I'm not saying that's what happened, but I'm
 7 just giving you a hypothetical.

8 Q. Did you see any evidence in this investigation
 9 that the State's Attorney instructed the police officers
 10 that there was never going to be charges against Hector
 11 Montanez?

12 MR. KIVETZ: Object to the form.

13 THE WITNESS: I didn't -- I didn't hear
 14 anything either way.

15 BY MR. SWAMINATHAN:

16 Q. Okay. And you -- did you see any evidence in
 17 your review of all the materials in this case, the
 18 State's Attorney instructed the homicide detectives not
 19 to conduct further investigation?

20 A. Again, same thing, I didn't hear to or not to.

21 Q. What the police report said, that you
 22 reviewed, is that the State's Attorney decided not to
 23 charge Montanez because they didn't have enough evidence
 24 against Mr. Montanez, correct?

25 A. Correct. But they did --

<p style="text-align: right;">Page 166</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: But they did -- there's no</p> <p>3 mention of the -- the State Attorney saying, "Do --</p> <p>4 do some more investigation or go talk to this</p> <p>5 person or that person," no.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. And is it your -- and so it's -- if I</p> <p>8 understand correctly, your opinion is that police</p> <p>9 officers should not conduct additional investigation</p> <p>10 unless the State's Attorney tells them to?</p> <p>11 MR. KIVETZ: Objection. Form. Misstates his</p> <p>12 testimony.</p> <p>13 THE WITNESS: That -- that's not what I'm</p> <p>14 saying. I'm just saying that in the -- in the file</p> <p>15 that I reviewed, there's no mention by the State</p> <p>16 Attorney, that I saw, of either one way or another.</p> <p>17 At the time, he said, and it's -- it's in the file,</p> <p>18 that there was insufficient evidence to charge</p> <p>19 Montanez.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. If this had been your case --</p> <p>22 MR. KIVETZ: Objection.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. -- would you have done additional</p> <p>25 investigation?</p>	<p style="text-align: right;">Page 168</p> <p>1 gotten additional information that way? Who knows?</p> <p>2 That's too -- I -- I can't speculate on what's</p> <p>3 going to happen tomorrow or six months down the</p> <p>4 road.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. And so if you'd been the homicide investigator</p> <p>7 on this case, you would've said, "Nah, probably not</p> <p>8 going to go anywhere, I'm just going to do no further</p> <p>9 investigation"?</p> <p>10 MR. KIVETZ: Objection. Form. Foundation.</p> <p>11 Misstates his testimony. Speculative.</p> <p>12 THE WITNESS: No, sir. I wouldn't say that.</p> <p>13 Just I -- I'm saying it would be -- it would be</p> <p>14 probably put on the back burner because there are</p> <p>15 other cases coming in. But if information came in,</p> <p>16 like again, I'll cite an example, Montanez tells</p> <p>17 another gang member that's later arrested and wants</p> <p>18 to flip and say, "Hey, by the way, Montanez told me</p> <p>19 that he's the one that handed Sierra the -- the</p> <p>20 gun, because he wanted this guy killed -- one of</p> <p>21 the guys in that car killed," then that's a</p> <p>22 different story. But it's -- it's -- it's -- at</p> <p>23 the time of -- of the -- of Sierra's arrest, there</p> <p>24 was no other evidence that I'd read about to charge</p> <p>25 Montanez.</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. KIVETZ: Objection. Form. Foundation.</p> <p>2 Speculative.</p> <p>3 THE WITNESS: Not necessarily. Listen, there</p> <p>4 were two people in the car. Sierra would have to</p> <p>5 say, "Montanez handed me the gun and told me to</p> <p>6 shoot." Is he ever going to say that? No. There</p> <p>7 was nobody else in the car. Where's the other</p> <p>8 information going to come from?</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. So you're -- so in this case, you</p> <p>11 believe, based on the evidence, there was no point in</p> <p>12 doing any further investigation into Montanez?</p> <p>13 A. No.</p> <p>14 MR. KIVETZ: Objection. Form.</p> <p>15 THE WITNESS: Again, that's not what I'm</p> <p>16 saying. I'm just citing you as an example, that</p> <p>17 Sierra is not going to --</p> <p>18 MR. KIVETZ: Let him finish.</p> <p>19 THE WITNESS: -- Sierra is not going to point</p> <p>20 the finger at Montanez and say, "He handed me the</p> <p>21 gun," or "He told me he was having a problem with</p> <p>22 these guys and that's why I fired," you know,</p> <p>23 something to that extent. That's -- that's one.</p> <p>24 Could Montanez have told somebody else, "Yeah,</p> <p>25 I was part of it," you know, six months later, and</p>	<p style="text-align: right;">Page 169</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Did you see any efforts in the course of the</p> <p>3 investigation to identify who the male Black was in the</p> <p>4 back of the car?</p> <p>5 MR. KIVETZ: Objection. Form.</p> <p>6 THE WITNESS: He -- it -- they -- he refused</p> <p>7 to identify him. And what -- what the police</p> <p>8 department did, the detectives did to try and</p> <p>9 identify him, I -- I can't answer that. Was there</p> <p>10 any attempt to identify him? I can't answer that.</p> <p>11 Did the State Attorney do something? I don't know.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. In this case, was there anything preventing</p> <p>14 the detectives from doing some additional investigation</p> <p>15 to try to obtain physical evidence?</p> <p>16 MR. KIVETZ: Objection. Form.</p> <p>17 THE WITNESS: Physical evidence of what type?</p> <p>18 Testimonial, I can see, but not physical.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Was there any physical evidence that could</p> <p>21 have potentially been collected in this case from</p> <p>22 Mr. Montanez?</p> <p>23 A. I don't think so.</p> <p>24 MR. KIVETZ: Objection. Form.</p> <p>25 THE WITNESS: I'm just thinking of</p>

<p style="text-align: right;">Page 170</p> <p>1 Mr. Montanez as a driver, I can't think of 2 anything. 3 BY MR. SWAMINATHAN: 4 Q. Could a search have been done of 5 Mr. Montanez's home? 6 MR. KIVETZ: Objection. Form. Foundation. 7 Speculative. 8 THE WITNESS: I don't know that the detectives 9 could convince a judge to give them a search 10 warrant based on the circumstances and the facts 11 that they knew at that time. 12 BY MR. SWAMINATHAN: 13 Q. That's what I'm asking you. With with Hector 14 Montanez's handwritten statement, would there have been 15 any basis for them to try to get access to his home to 16 search for a murder weapon, for example? 17 MR. KIVETZ: Objection. He just answered that 18 question. 19 THE WITNESS: No. I -- I don't think there 20 was sufficient information to justify and get 21 probable cause to search his house. 22 BY MR. SWAMINATHAN: 23 Q. Was there anything to prevent them from asking 24 him for consent to search? 25 A. I --</p>	<p style="text-align: right;">Page 172</p> <p>1 BY MR. SWAMINATHAN: 2 Q. Based on your experience, you would've 3 expected the vehicle to be searched? 4 MR. KIVETZ: Objection. That misstates what 5 he said. 6 THE WITNESS: Yes. But -- and -- and I'm sure 7 that it -- it was. Knowing police officers like I 8 know them, that vehicle would've been, was or 9 would've been, should have been searched. 10 BY MR. SWAMINATHAN: 11 Q. Absolutely. And did you see any evidence that 12 the vehicle was, in fact, searched in your review of the 13 police records in this case? 14 MR. KIVETZ: Objection. Form. You're -- 15 assumes facts -- or misrepresents the facts, 16 whatever you want to call it. Go ahead. 17 THE WITNESS: The vehicle was photographed. As 18 far as any mention of an actual search, I did not 19 see it. 20 BY MR. SWAMINATHAN: 21 Q. Yeah. Did you see any evidence -- or strike 22 that. Did you see any information in the file that 23 evidence technicians were called out to search -- 24 MR. KIVETZ: Objection. Form. 25 BY MR. SWAMINATHAN:</p>
<p style="text-align: right;">Page 171</p> <p>1 MR. KIVETZ: Objection. Form. 2 THE WITNESS: I don't know that -- that there 3 was anything preventing them, or if they did, I 4 don't know. I didn't read anything about that in 5 their file one way or another. 6 BY MR. SWAMINATHAN: 7 Q. You didn't see anything in the file -- oh, 8 sorry. Go ahead. 9 A. -- one way or another. 10 Q. You didn't see anything in the file indicating 11 that they asked Mr. Montanez if they could search his 12 home? 13 A. No, sir. 14 MR. KIVETZ: Objection. 15 BY MR. SWAMINATHAN: 16 Q. You didn't see anything in the file indicating 17 that they made efforts to engage in some forensic 18 assessment of the vehicle? 19 MR. KIVETZ: Objection. Form. 20 THE WITNESS: They -- the vehicle, I know was 21 photographed. My knowledge and experience would 22 lead me to believe that that vehicle was searched. 23 And there was nothing of evidentiary value 24 recovered, that I read, in any of the information 25 that was provided.</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. -- to check on the vehicle or search the 2 vehicle? 3 A. I don't remember where, but I think that 4 evidence technicians were the ones who were called out 5 to photograph it. 6 Q. To photograph the vehicle? 7 A. I believe so. 8 Q. Okay. And then did the -- was there any 9 indication that the evidence technicians conducted a 10 search of the vehicle for bullet casings, for example, 11 or anything else? 12 MR. KIVETZ: Objection. Form. 13 THE WITNESS: I don't believe that I saw any 14 of that in the documents that I reviewed. 15 BY MR. SWAMINATHAN: 16 Q. But that would be an appropriate thing to do, 17 you agree? 18 MR. KIVETZ: Objection. Form. 19 THE WITNESS: Yes. And I -- I -- again, I -- 20 I believe that it was done. 21 BY MR. SWAMINATHAN: 22 Q. And if that was done -- I'm sorry. Go ahead. 23 A. While it's not documented, it -- it -- police 24 officers in a situation like that would search that car. 25 Q. And if that was not done -- strike that. If</p>

<p style="text-align: right;">Page 174</p> <p>1 there was not a search of the vehicle, that would be a 2 deviation from accepted police practices, fair?</p> <p>3 MR. KIVETZ: Objection. Form. He just says - 4 - he just said that he believes that the search 5 occurred, based upon the normal practices and it 6 wasn't written down. You're assuming the opposite 7 when you're asking that question.</p> <p>8 MR. SWAMINATHAN: Exactly. That's a 9 hypothetical question. It's called a hypothetical 10 question to an expert.</p> <p>11 MR. KIVETZ: So you're admitting it's a 12 hypothetical question and it's absolutely useless 13 and baseless? All right. Go ahead.</p> <p>14 MR. SWAMINATHAN: It's not. It's not, because 15 you --</p> <p>16 MR. KIVETZ: Objection to form.</p> <p>17 MR. SWAMINATHAN: -- you have a whole fucking 18 file that doesn't have that in it anywhere. It's 19 completely made-up nonsense. It's completely made- 20 up nonsense.</p> <p>21 MR. KIVETZ: All right.</p> <p>22 MR. SWAMINATHAN: It's completely made-up 23 nonsense. I'm going to cross him on exactly this 24 point in trial --</p> <p>25 MR. KIVETZ: -- that police officers --</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. KIVETZ: It's nonsense. 2 MR. SWAMINATHAN: -- it should be taken 3 seriously, right, Mr. Andreu?</p> <p>4 MR. KIVETZ: It's -- I can't take your stuff 5 seriously, because of this shit that you do.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Mr. Andreu, this is a homicide investigation; 8 it should be taken seriously, right?</p> <p>9 A. Yes, sir.</p> <p>10 MR. KIVETZ: Objection to form.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. And you consider a witness saying that they 13 were told which picture to pick out of a lineup; do you 14 consider that to be a minor issue?</p> <p>15 MR. KIVETZ: Objection to form.</p> <p>16 THE WITNESS: Let me back up, I'm going to -- 17 I'm going to answer it. The -- the investigation 18 of the case itself is very important. That was 19 your previous question. Now, what was the last 20 one?</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. The next question is: If there are witnesses 23 who say that they were told what picture to pick out of 24 a lineup, would that be a minor issue to you, as Counsel 25 just characterized it?</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. SWAMINATHAN: -- because it's such a joke. 2 MR. KIVETZ: -- that police officers who bring 3 in a car don't search it --</p> <p>4 MR. SWAMINATHAN: Show me where --</p> <p>5 MR. KIVETZ: -- for security --</p> <p>6 MR. SWAMINATHAN: -- show me the document that 7 they searched the vehicle.</p> <p>8 MR. KIVETZ: -- just to take photos? They 9 don't take a look in the back seat?</p> <p>10 MR. SWAMINATHAN: Yeah.</p> <p>11 MR. KIVETZ: Because it wasn't written down, 12 you're assuming it wasn't done?</p> <p>13 MR. SWAMINATHAN: That's what's so stupid 14 about it.</p> <p>15 MR. KIVETZ: Oh, my God.</p> <p>16 MR. SWAMINATHAN: Why wouldn't they document 17 whether or not they found anything in the vehicle?</p> <p>18 MR. KIVETZ: You want every little thing to 19 document, every little thing, so you can later on 20 just nuance it and then just find a problem with 21 that. That's just all you do, nitpick little stuff 22 and make it seem bigger than it actually is. And 23 you know it.</p> <p>24 MR. SWAMINATHAN: It's a homicide 25 investigation --</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. KIVETZ: I didn't characterize that. 2 That's not exactly -- that is not even close to 3 what I said. This is the stuff that you do.</p> <p>4 MR. SWAMINATHAN: You say that all we do is 5 pick on small issues?</p> <p>6 MR. KIVETZ: This is the exact nonsense that 7 you do. That makes zero sense. You just assume 8 that's the particular part that I was talking 9 about.</p> <p>10 MR. SWAMINATHAN: No. You said, "All you do 11 is pick on small issues." I've been talking about 12 all these issues.</p> <p>13 MR. KIVETZ: This is ridiculous.</p> <p>14 MR. SWAMINATHAN: So you're telling me all 15 these issues are small issues?</p> <p>16 MR. KIVETZ: This is ridiculous. Don't drag 17 me into your questions.</p> <p>18 MR. SWAMINATHAN: No, you're asking me -- 19 you're talking about a bunch of --</p> <p>20 MR. KIVETZ: Don't drag me into your 21 questions. Stop.</p> <p>22 MR. SWAMINATHAN: -- I'm asking about whether 23 you think what I'm doing is bogus.</p> <p>24 MR. KIVETZ: Stop. Ask a regular question 25 that you can actually use in front of a trial</p>

<p>1 judge. Ask it and move on.</p> <p>2 MR. SWAMINATHAN: I'm going to ask each of</p> <p>3 these questions because they're so obviously</p> <p>4 relevant in a case that stinks.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Does this -- Mr. Andreu, did -- does anything</p> <p>7 about this case just sit -- doesn't sit right with you?</p> <p>8 MR. KIVETZ: Objection. Form, foundation.</p> <p>9 Speculative.</p> <p>10 THE WITNESS: No. I think that the detectives</p> <p>11 did a good job.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. They did a great job. And you felt they did a</p> <p>14 great job in the Reyes case, too, right?</p> <p>15 MR. KIVETZ: Objection. Form. Harassing. All</p> <p>16 right. I'm -- we need a break, clearly. We'll</p> <p>17 take five minutes.</p> <p>18 THE REPORTER: All right. We're off the</p> <p>19 record. The time is 1:50.</p> <p>20 (OFF THE RECORD)</p> <p>21 THE REPORTER: We are back on the record for</p> <p>22 the deposition of Nelson Andreu being conducted by</p> <p>23 videoconference. My name is Sydney Little. Today</p> <p>24 is May 12th, 2023, and the time is 1:56 p.m.</p> <p>25 Central.</p>	<p>Page 178</p> <p>1 A. Yes, sir.</p> <p>2 Q. Is that a small issue?</p> <p>3 A. No.</p> <p>4 Q. And if that allegation is true, you would find</p> <p>5 that to be serious misconduct in a homicide</p> <p>6 investigation. Is that fair?</p> <p>7 A. That they pointed to the suspect in the</p> <p>8 lineup? Yes, sir.</p> <p>9 Q. Okay. And do you have an understanding of how</p> <p>10 many years of life were taken from the 40 men who had</p> <p>11 their convictions thrown out involving Detective</p> <p>12 Guevara?</p> <p>13 MS. MCGRATH: Objection. Form.</p> <p>14 THE WITNESS: Do I have what?</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Any idea how many years of life were taken</p> <p>17 from these 40 men who sat in prison and that had their</p> <p>18 convictions later thrown out?</p> <p>19 A. No, I don't have the totality.</p> <p>20 Q. Do you have an understanding of how long</p> <p>21 Thomas Sierra spent in prison before his conviction was</p> <p>22 thrown out?</p> <p>23 MR. KIVETZ: Objection to form and foundation.</p> <p>24 MS. MCGRATH: Objection to form.</p> <p>25 THE WITNESS: I think it was 20-some years.</p>
<p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Mr. Andreu?</p> <p>3 A. Yes, sir.</p> <p>4 Q. If Mr. Guevara and Halvorsen falsified police</p> <p>5 reports as Mr. Malczyk testified to, would that be a big</p> <p>6 deal to you?</p> <p>7 MR. KIVETZ: Objection. Form.</p> <p>8 THE WITNESS: Yes, that would be improper.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. Is that something that you take very</p> <p>11 seriously?</p> <p>12 A. Yes.</p> <p>13 MR. KIVETZ: Objection. Form.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Is that a minor issue to you?</p> <p>16 MR. KIVETZ: Objection to form.</p> <p>17 THE WITNESS: If -- if they -- if -- just let</p> <p>18 me -- let me clarify. There's a difference between</p> <p>19 making an -- an error on a report, but to do</p> <p>20 something purposely that could affect the outcome</p> <p>21 is -- is something that's serious. Yes.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. If Detective Guevara or other detectives</p> <p>24 pointed at a specific picture to influence Mr. Melendez,</p> <p>25 is that something you take very seriously?</p>	<p>Page 179</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Is that an issue of serious importance and</p> <p>3 gravity to you?</p> <p>4 MR. KIVETZ: Objection. Form.</p> <p>5 MS. MCGRATH: Objection. Form.</p> <p>6 THE WITNESS: If he was not guilty of the</p> <p>7 crime, yes.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. And if he's not guilty of the crime, it's an</p> <p>10 even bigger problem, isn't it?</p> <p>11 MR. KIVETZ: Objection.</p> <p>12 MS. MCGRATH: Same objection.</p> <p>13 THE WITNESS: Of course.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. The stakes in a homicide investigation are</p> <p>16 huge, correct?</p> <p>17 MS. MCGRATH: Objection. Form.</p> <p>18 MR. KIVETZ: Objection.</p> <p>19 THE WITNESS: The stakes, you said?</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Yes?</p> <p>22 A. Yes, sir.</p> <p>23 Q. The stakes are huge for the victim and the</p> <p>24 victim's family, correct?</p> <p>25 A. Yes.</p>

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1 MR. KIVETZ: Objection. Form.

2 BY MR. SWAMINATHAN:

3 Q. And the stakes are huge for anybody who's
 4 suspected and charged and convicted of such a crime,
 5 correct?

6 MR. KIVETZ: Objection.

7 MS. MCGRATH: Objection. Form.

8 THE WITNESS: Yes, sir.

9 BY MR. SWAMINATHAN:

10 Q. Should you cut corners in a homicide
 11 investigation?

12 MR. KIVETZ: Objection. Form.

13 THE WITNESS: No, sir.

14 BY MR. SWAMINATHAN:

15 Q. Should homicide detectives allow themselves to
 16 be sloppy in how they conduct a homicide investigation?

17 MS. MCGRATH: Objection. Form.

18 MR. KIVETZ: Objection. Form.

19 THE WITNESS: They should not. No.

20 BY MR. SWAMINATHAN:

21 Q. Supervisors train their detectives to be
 22 thorough in their homicide investigations?

23 MR. KIVETZ: Objection to form.

24 THE WITNESS: Yes, sir.

25 BY MR. SWAMINATHAN:

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1 Q. Is one of the jobs of the supervisor to make
 2 sure that officers are not being sloppy and cutting
 3 corners in a homicide investigation?

4 MR. KIVETZ: Objection. Form.

5 THE WITNESS: Yes, sir.

6 BY MR. SWAMINATHAN:

7 Q. In this case, could the detectives have
 8 searched for fingerprints of Thomas Sierra in the Buick
 9 Park Avenue?

10 MR. KIVETZ: Objection. Form.

11 MS. MCGRATH: Objection. Form.

12 MR. KIVETZ: Foundation, speculative.

13 THE WITNESS: Anything is possible that --
 14 that they -- they could have. Again, is that
 15 something that was a big deal because it was not
 16 done or was it something that fell through the
 17 cracks? No. But it's something that could have
 18 been done. Yes.

19 BY MR. SWAMINATHAN:

20 Q. Is it some -- is there anything preventing the
 21 detectives in this case from having dusted the car for
 22 fingerprints?

23 MR. KIVETZ: Objection. Form, foundation,
 24 speculative.

25 MS. MCGRATH: Join.

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1 THE WITNESS: That prohibited them from doing
 2 that? No.

3 BY MR. SWAMINATHAN:

4 Q. Okay. And did you see any evidence that they
 5 did do that?

6 MR. KIVETZ: Objection. Form.

7 THE WITNESS: No, sir. I did not.

8 BY MR. SWAMINATHAN:

9 Q. And if they had done that and found Thomas
 10 Sierra's fingerprints, that would've been useful
 11 evidence, correct?

12 MR. KIVETZ: Objection. Form.

13 MS. MCGRATH: Objection. Form.

14 THE WITNESS: That would've been additional
 15 evidence, yes.

16 BY MR. SWAMINATHAN:

17 Q. Okay.

18 A. Let me explain.

19 Q. Is it something that in Miami -- strike that.

20 MR. KIVETZ: He didn't finish, he's still
 21 speaking.

22 THE WITNESS: You can't date a fingerprint.

23 And -- and my -- what I have been reading in these
 24 Chicago cases is that these gang members frequently
 25 swap cars, borrow cars, sell cars, buy cars. So if

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1 his fingerprint would've been in there and they
 2 would've asked the -- the latent examiner who
 3 identified it to Mr. Sierra, when was this
 4 fingerprint put on there, the day of the murder or
 5 six weeks later, or two days after the murder?
 6 There's no way to date it.

7 So it would've been additional information,
 8 but it wouldn't have been, you know, concrete that
 9 -- that he left that fingerprint the day of the
 10 shooting or the night of the shooting.

11 BY MR. SWAMINATHAN:

12 Q. In Miami, when you conducted homicide
 13 investigations, if you had a vehicle that was believed
 14 to have been used in the crime, would you do things like
 15 dust the vehicle for the fingerprints of your suspects?

16 MR. KIVETZ: Objection. Form, foundation,
 17 speculative, incomplete hypothetical.

18 THE WITNESS: Oftentimes, yes.

19 BY MR. SWAMINATHAN:

20 Q. And would you do things like search the
 21 vehicle for things like physical evidence that might
 22 contain DNA or other ways to connect it to the suspect?

23 MR. KIVETZ: Objection. Form, foundation,
 24 speculative, incomplete hypothetical.

25 THE WITNESS: Yes, sir.

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1 BY MR. SWAMINATHAN:

2 Q. And would you do things in Miami, like have
 3 that vehicle searched thoroughly for bullet casings that
 4 could end up in hard-to-reach places?

5 MR. KIVETZ: Objection. Form, foundation,
 6 speculative, incomplete hypothetical.

7 THE WITNESS: Yes. Even though he -- the --
 8 the witnesses said he stuck his gun out the -- the
 9 -- the door. So that would not be a -- a high
 10 probability of finding a casing in that car.

11 BY MR. SWAMINATHAN:

12 Q. What direction do bullet casings usually
 13 eject, sir?

14 MR. KIVETZ: Objection. Form. Object.

15 THE WITNESS: I'm not a gun expert, but it
 16 depends on the weapon.

17 BY MR. SWAMINATHAN:

18 Q. What was the weapon that was understood to be
 19 used in this case?

20 A. Well, but -- I'm not -- I'm -- it was 9-
 21 millimeter, but the brand depends on which side the --
 22 the casing ejects from.

23 Q. And do casings usually eject forward or
 24 backward?

25 MR. KIVETZ: Objection. Form.

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1 Q. And in your estimation, should that vehicle
 2 have been brought in by the police rather than brought
 3 in by some other third party?

4 MR. KIVETZ: Objection. Form. Misstates the
 5 evidence.

6 THE WITNESS: I -- I don't remember right now
 7 how it was that the vehicle was -- who was in it
 8 when it was stopped and the -- the -- the location
 9 where it was, where it was stopped, but it could
 10 have -- it could have been towed in. It could have
 11 been driven in by an officer. Or the detectives, I
 12 guess, felt it proper to have the -- whoever was in
 13 it, drive it to the police station.

14 BY MR. SWAMINATHAN:

15 Q. When you were investigating homicides, if you
 16 had seized a vehicle in the street that you believed to
 17 have been involved in a murder, would you have somebody
 18 get in the car and drive it to the police station or
 19 would you have it towed in?

20 MR. KIVETZ: Objection. Form, foundation,
 21 speculative, incomplete hypothetical.

22 THE WITNESS: I would say that the majority of
 23 the time I would have it towed in.

24 BY MR. SWAMINATHAN:

25 Q. Why is that?

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1 THE WITNESS: Sir. I -- I don't know enough
 2 about firearms except, you know, when I have gone
 3 and they go to the side, I guess.

4 BY MR. SWAMINATHAN:

5 Q. Did you see any indication in the police
 6 reports that you reviewed in the Andujar homicide
 7 investigation that the police had the bar -- Buick Park
 8 Avenue dusted for fingerprints?

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: I did not read that in the
 11 reports.

12 BY MR. SWAMINATHAN:

13 Q. Did you see anywhere in the police report that
 14 you reviewed for the Andujar homicide investigation that
 15 the detectives collected any physical evidence in the
 16 vehicle that might be used to connect it to Mr. Montanez
 17 or Mr. Sierra?

18 MR. KIVETZ: Objection. Form.

19 THE WITNESS: I did not read that in the
 20 reports.

21 BY MR. SWAMINATHAN:

22 Q. How did the vehicle get to the police station?

23 A. One of the witnesses, I can't remember which
 24 one right now, drove it to the police station, if I
 25 remember correctly.

1 MR. KIVETZ: Objection. Form, speculative,
 2 incomplete hypothetical.

3 THE WITNESS: Again, police practices and what
 4 I was taught.

5 BY MR. SWAMINATHAN:

6 Q. You want to reduce the amount of potential
 7 contamination, correct?

8 MR. KIVETZ: Objection. Form, foundation,
 9 speculative, incomplete hypothetical.

10 THE WITNESS: One of the reasons.

11 BY MR. SWAMINATHAN:

12 Q. Okay. And it's a homicide investigation, that
 13 kind of evidence can be extremely important, right?

14 MR. KIVETZ: Objection. Form, foundation,
 15 speculative, incomplete hypothetical.

16 THE WITNESS: Yes, sir. It could be.

17 BY MR. SWAMINATHAN:

18 Q. And you want to get it right?

19 MR. KIVETZ: Objection. Form.

20 THE WITNESS: Yes, sir.

21 BY MR. SWAMINATHAN:

22 Q. Stakes are high, right?

23 MR. KIVETZ: Objection. Form. Asked and
 24 answered.

25 THE WITNESS: Yes, sir. They are.

<p style="text-align: right;">Page 190</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Go to Page 16 of your report, please.</p> <p>3 A. 1-6?</p> <p>4 Q. Yeah. Thank you.</p> <p>5 A. Okay, sir.</p> <p>6 Q. In Paragraph 75.</p> <p>7 A. Okay.</p> <p>8 Q. There you're citing to the deposition</p> <p>9 testimony of Alberto Rodriguez, correct? From 2009.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So that's one place where you discuss</p> <p>12 the testimony of a witness in this case, right?</p> <p>13 A. Yes.</p> <p>14 Q. That's one case where you discussed the</p> <p>15 deposition testimony of one of the witnesses, correct?</p> <p>16 A. Yes.</p> <p>17 Q. So you discussed the testimony of</p> <p>18 Mr. Rodriguez in 2009. Do you discuss anywhere in your</p> <p>19 report, any subsequent testimony that he gave?</p> <p>20 A. I don't believe so. No, sir.</p> <p>21 Q. And you discussed the testimony of</p> <p>22 Mr. Rodriguez in 2009. Do you discuss any of the</p> <p>23 deposition testimony of Jose Melendez in your report?</p> <p>24 MR. KIVETZ: Objection. Asked and answered</p> <p>25 multiple times.</p>	<p style="text-align: right;">Page 192</p> <p>1 any of the other witnesses? That is correct.</p> <p>2 Again, I -- I put -- I -- I noted what Rodriguez</p> <p>3 had said in his deposition to show that the</p> <p>4 detectives had the right individual, Mr. Sierra.</p> <p>5 And that -- that the credibility of what the</p> <p>6 witnesses were saying, whether it be Rodriguez or</p> <p>7 Melendez or whoever it was.</p> <p>8 Again, it's not up to me to decide. The --</p> <p>9 the -- the Court or the jury will read, like I did,</p> <p>10 the totality of it and come to a decision on who</p> <p>11 they determine is truthful or not truthful.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. In this case, sir, I have two invoices from</p> <p>14 you that add up to approximately \$45,000. Is that --</p> <p>15 sound about right in terms of the amount of time you</p> <p>16 spent preparing your expert report in this case?</p> <p>17 A. That sounds about right. Yes, sir.</p> <p>18 Q. Okay. And what portion of your time that you</p> <p>19 spent on this case did you spend on reviewing the</p> <p>20 documents as opposed to writing your report?</p> <p>21 A. Probably 90 percent.</p> <p>22 Q. 90 percent was on reviewing the documents?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. All right. Let's mark -- are we at</p> <p>25 Exhibit 4?</p>
<p style="text-align: right;">Page 191</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay. I'll ask you a different question. Why</p> <p>3 did you refer to the deposition testimony of</p> <p>4 Mr. Rodriguez in your report, but not the deposition</p> <p>5 testimony of Mr. Melendez anywhere in your report?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: I was offering an opinion to</p> <p>8 show the testimony of one of the witnesses to have</p> <p>9 -- to remain until 2009, sure that it was</p> <p>10 Mr. Sierra that had committed the crime.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. And so you credited Mr. Rodriguez's 2009</p> <p>13 testimony?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. But you didn't credit Mr. Melendez'</p> <p>16 testimonies in his depositions for purposes of your</p> <p>17 opinions, correct?</p> <p>18 MR. KIVETZ: Objection. Form, foundation. I</p> <p>19 mean, asked multiple times, and he has explained to</p> <p>20 you, he's looked at the totality of the</p> <p>21 circumstances. And assumed --</p> <p>22 THE WITNESS: Specifically --</p> <p>23 MR. KIVETZ: -- the trier of fact considers</p> <p>24 one thing, then his opinions would change.</p> <p>25 THE WITNESS: So specifically no testimony of</p>	<p style="text-align: right;">Page 193</p> <p>1 THE REPORTER: We are at 3</p> <p>2 MR. SWAMINATHAN: At 3. I thought I made the</p> <p>3 Tiderington report Exhibit 3. No?</p> <p>4 THE REPORTER: You didn't mark it, but we can.</p> <p>5 MR. SWAMINATHAN: Okay. Let's mark that as</p> <p>6 Exhibit 3. I may have made a mistake.</p> <p>7 (EXHIBIT 3 MARKED FOR IDENTIFICATION)</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. Okay. Let's see. Do you have your invoices</p> <p>10 in front of you? Just because the sharing screen seems</p> <p>11 to be a problem.</p> <p>12 A. No, but I can bring them up on my computer.</p> <p>13 Just a moment.</p> <p>14 Q. Okay. Should I try putting it up real quick?</p> <p>15 Because I think we're going to go fast. Let me see if</p> <p>16 it works for me to put it up. And if it doesn't, you</p> <p>17 can find it. Are you getting -- can you hear me okay?</p> <p>18 Are we getting -- is it freezing a little? Yep.</p> <p>19 MR. KIVETZ: It's freezing on us.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Okay. I'm taking it off.</p> <p>22 A. Again. I can't hear. Lost the video. Did</p> <p>23 everything --</p> <p>24 MR. KIVETZ: I think he's just taking a break.</p> <p>25 THE WITNESS: Oh, okay.</p>

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1 MR. KIVETZ: Just a child issue. It's okay.
 2 BY MR. SWAMINATHAN:
 3 Q. Sorry. I'm in my daughter's room. That's my
 4 office. This is what I've been relegated to.

5 A. No, I can't -- hold on. Because now it locked
 6 up my thing here. Hold on. Wow. Okay.

7 Q. You have it, sir?

8 A. Yes.

9 Q. Okay.

10 A. What do you need me to bring up?

11 Q. Your two invoices that I'm -- I have a January
 12 invoice and a December invoice.

13 A. January and December. Here is December.

14 MR. KIVETZ: Wait, the December invoice? 160,
 15 Andreu 160?

16 MR. SWAMINATHAN: Yeah, I have it as Andreu 2
 17 -- Andreu 1 and 2. I think they were in the one
 18 that was sent to me last night and the 1 through
 19 251 that was sent yesterday, or last few days ago.

20 MR. KIVETZ: McIntosh billings?

21 MS. FLEMING: No, it's the subpoena response.

22 BY MR. SWAMINATHAN:

23 Q. Subpoena response. Yeah. It's basically
 24 Pages 1 and 2 of the subpoena response that was sent to
 25 us, I think probably four or five days ago or something.

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1 A. Okay. The January one is for \$7,875.
 2 Q. Yes. Thank you. And then the December one is
 3 for \$36,225. Do you see that?

4 A. Hold on. Here.

5 Q. You have it, Mr. Andreu?

6 A. No, I'm looking here. I show a different one.
 7 Let me make sure. Whoops. Okay. The one that's dated
 8 December 1st --

9 Q. Yes, sir.

10 A. -- is -- is for the work done in November.

11 Q. Correct. And that bill is for 36,225,
 12 correct?

13 A. Yes.

14 Q. Okay. Let's -- and then you have the other
 15 bill too, the January 2nd bill?

16 A. Yes.

17 Q. For work in December. Okay. So let me --
 18 let's go out -- let's do it on the record properly here.
 19 Okay. So let me ask you the questions. So Mr. Andreu,
 20 I'm showing you a document, marking it as Exhibit 4. And
 21 it's Bates-stamped Andreu 1 and Andreu 2. And these are
 22 invoices that -- for the Sierra v. Guevara, et al.,
 23 case. One is dated January 2nd, 2023, and one is dated
 24 December 1st, 2022. Are these your invoices related to
 25 the Thomas Sierra matter?

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1 (EXHIBIT 4 MARKED FOR IDENTIFICATION)

2 A. Yes. Let me go back to the other one. What
 3 is -- November? This one is December. Okay. Yes. One
 4 for \$7,875, and one for \$36,225, correct.

5 BY MR. SWAMINATHAN:

6 Q. Okay. Thank you. Do you have any other bills
 7 for the Thomas Sierra matter?

8 A. I have a pending invoice for work that I've
 9 done in preparation for the deposition.

10 Q. Okay.

11 A. That has not been submitted.

12 Q. Thank you. These -- Exhibit 4 containing
 13 these two invoices from December and January, are -- do
 14 these invoices reflect all the time you spent on the
 15 Sierra case through the time of completing your expert
 16 report?

17 A. Let me look at this. Yes, sir. I believe
 18 that's two -- those are the -- those are the two, and
 19 again, the one that's pending that has not been
 20 submitted.

21 Q. Okay. And to just -- I'm just going to ask a
 22 couple precise questions. The two bills in Exhibit 4,
 23 all of the time that's listed in these two exhibits, in
 24 these two invoices, was time spent on your expert
 25 report. Is that fair?

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1 A. No. The -- the expert report is towards the
 2 end where it says, "Began report," and then --

3 MR. KIVETZ: Don't -- no --

4 BY MR. SWAMINATHAN:

5 Q. No, no. I'm sorry. Sorry, Mr. Andreu. Yeah.
 6 First, the version we have, that has redactions on it,
 7 so I don't want you to tell me what's contained on the
 8 left-hand column of the report.

9 A. Okay.

10 Q. And let me try to be -- let me ask a better
 11 question. I think I understand where we're crossing
 12 paths here. You basically spent time reviewing
 13 materials and writing a report, is that fair?

14 A. Correct.

15 Q. Okay. The Exhibit 4, consisting of your two
 16 invoices, is all of the time on these two invoices
 17 related to your review of documents and report writing
 18 in the Sierra matter?

19 A. Yes. But again, while I am writing my report,
 20 I may go back -- and I frequently do -- to go back and
 21 review additional things. So it's not -- I'm just not
 22 typing out -- typing out the report. So I go back and
 23 forth.

24 Q. Okay. But ultimately, the -- if I added up
 25 the total number of hours on these two invoices, which

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1 is 126 total hours, that's the amount of time you spent
 2 reviewing materials and generating your report, fair?
 3 A. Yes. That's fair.
 4 Q. Okay. And then there is not any additional
 5 time that you spent preparing your report that's not
 6 captured on these two invoices, is that also fair?

7 A. Fair.

8 Q. Okay. Are you -- you have previously worked
 9 on cases involving the City of Chicago in McIntosh,
 10 Brown, and Reyes, Solaches, correct?

11 A. Yes, sir.

12 Q. Are you working on any other cases for the
 13 Chicago Police Department?

14 A. Not --

15 MR. KIVETZ: Objection. Form. Hold on, Tony
 16 (phonetic), don't -- I'm going to advise not to
 17 answer that question.

18 BY MR. SWAMINATHAN:

19 Q. Let me ask this: Are you working on any other
 20 cases -- are there any other cases on which you've
 21 worked for the Chicago Police Department in which you've
 22 disclosed an opinion?

23 A. No, just these three.

24 Q. Okay. And you've offered an opinion in an El
 25 Paso case called Villegas, correct?

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1 A. Yes, sir.
 2 Q. And is that also a wrongful conviction case?
 3 A. I only was asked to provide an opinion on the
 4 actions of a police officer, a uniformed police officer
 5 who had nothing to do with the actual investigation.
 6 Q. Okay. Are you working on any other cases
 7 outside the City of Chicago in your capacity as an
 8 expert?

9 MR. KIVETZ: Objection. Form. Where he's
 10 provided a report?

11 BY MR. SWAMINATHAN:

12 Q. Yeah. That fair. I'm not -- I think that
 13 that's fair. Where you provided a report?

14 A. No, sir.

15 MR. SWAMINATHAN: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. KIVETZ:

18 Q. Mr. Andreu, I just have a quick couple of
 19 questions and then we'll take a break, and then I think
 20 we should be done. Before things kind of went off the
 21 rails, you were discussing your opinion that you
 22 believed the officers did not violate any generally
 23 accepted practices by not documenting a failure or an
 24 inability to find any shells, bullet shells, in the car
 25 that matched the description of the shooting. Is that

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1 fair?
 2 A. Yes, sir.
 3 Q. Yeah. And is that your opinion, that you came
 4 to the conclusion that the officers did not violate any
 5 generally accepted practices by not documenting the
 6 failure to find any evidence in the car?

7 A. That is correct.

8 Q. Were you aware that the car was transferred in
 9 between the time of the shooting and the time of
 10 collection to another individual?

11 A. Yes.

12 Q. Okay. And you would agree that transfer would
 13 contaminate any potential evidence in the car?

14 A. Yes, I considered that. And -- and also
 15 usually when you get a new car, the first thing you do
 16 is clean it.

17 MR. KIVETZ: Let's just take a five-minute
 18 break. I -- it should be two minutes on it.

19 THE WITNESS: Okay. Okay.

20 THE REPORTER: Okay. We're off the record.
 21 The time is 2:20.

22 (OFF THE RECORD)

23 THE REPORTER: We are back on the record for
 24 the deposition of Nelson Andreu being conducted by
 25 videoconference. My name is Sydney Little. Today

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1 is May 12th, 2023 and the time is 2:25 p.m.
 2 Central.

3 MR. KIVETZ: I'm -- I have no further
 4 questions.

5 MS. BARBER: I don't have any questions.

6 MS. MCGRATH: I don't have any questions
 7 either. Thank you.

8 MR. SWAMINATHAN: No more questions from me.
 9 Thank you, Mr. Andreu.

10 THE REPORTER: Let me get orders while we're
 11 on the record. Anand, would you like a copy of the
 12 transcript?

13 MR. SWAMINATHAN: No. Thank you.

14 THE REPORTER: How about the video?

15 MR. SWAMINATHAN: No, thank you.

16 THE REPORTER: Okay. Jeff, would you like a
 17 copy?

18 MR. SWAMINATHAN: I think --

19 MR. KIVETZ: Same.

20 MR. SWAMINATHAN: I think we can short circuit
 21 it and all this Counsel are not request --

22 THE REPORTER: Nobody's ordering. Okay.

23 Sounds good. Let me get us off --

24 MS. BARBER: Not at this time.

25 THE REPORTER: All right. Okay. We're off

1 the record.

2 (DEPOSITION CONCLUDED AT 2:26 P.M. CT)

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3
4 CERTIFICATE OF DIGITAL REPORTER
5 STATE OF ILLINOIS

6 I do hereby certify that the witness in the foregoing
7 transcript was taken on the date, and at the time and
8 place set out on the Stipulation page hereof, by me
9 after first being duly sworn to testify the truth, the
10 whole truth, and nothing but the truth; and that the
11 said matter was recorded digitally by me and then
12 reduced to typewritten form under my direction, and
13 constitutes a true record of the transcript as taken,
14 all to the best of my skill and ability. I certify that
15 I am not a relative or employee of either counsel and
16 that I am in no way interested financially, directly or
17 indirectly, in this action.



Sydney Little

22 SYDNEY LITTLE,
23 DIGITAL REPORTER/NOTARY
24 MY COMMISSION EXPIRES: 03/18/2026
25 SUBMITTED ON: 02/28/2024

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